TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 107

INTERNATIONAL SHOE COMPANY, APPELLANT,

vs.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT AND E. B. RILEY, COMMISSIONER

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED JUNE 4, 1945.

SUPREME COURT OF THE UNITED STATES

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 21, 1945.

—9802

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

No. 34 2190

INTERNATIONAL SHOE COMPANY, a Corporation, Plaintiff,

vs.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, and E. B. RILEY, Commissioner, Defendant

CERTIFICATE OF COMMISSIONER

I, E. B. Riley, the undersigned Commissioner of Unemployment Compensation and Placement, of the State of Washington, hereby certify that attached hereto is a full, true and correct record of all proceedings had in the above matter.

Dated at Olympia, Washington, this 7th day of April, 1943.

E. B. Riley, Commissioner of Unemployment Compensation and Placement. (Seal.)

[fol. 2] STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, OLYMPIA

In the Matter of the Assessment of Contributions or Interest Against INTERNATIONAL SHOE COMPANY, a Corporation, An Employer.

ORDER AND NOTICE OF ASSESSMENT

The Commissioner of Unemployment Compensation and Placement of the State of Washington:

To International Shoe Company, a Corporation:

It appears to the Commissioner that you have failed or refused to pay contributions or interest due the Unemployment Compensation Fund for the period Jan. 1, 1937 through Dec. 31, 1940 and that said contributions or interest are now delinquent.

It Is Therefore Ordered By the Commissioner, pursuant to the power conferred upon him by Chapter 162, Laws of 1937, as amended, that the contributions or interest due and owing by you for said period are hereby determined to be the sum of Six Thousand and 00/100 Dollars ($6000.00), and said contributions or interest are hereby assessed against you.

Notice Is Hereby Given That unless payment of said contributions or interest, together with interest on unpaid contributions at the rate of 1% per month or 1/30 of 1% for each day or fraction thereof from the due date, is received within ten days after the date of service or mailing of this notice, the assessment indicated herein will become final and an action to distrain and sell sufficient of your goods, properties and chattels to satisfy this assessment may be commenced without further notice.

Section 14(e), Chapter 162, Laws of 1937, as amended by Chapter 258, Laws of 1941:

"When any notice of assessment has been delivered or mailed to a delinquent employer, as heretofore provided, such employer may within ten days thereafter file a petition in writing with the commissioner, stating that such assessment is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the Division of Unemployment Compensation. If no such petition be filed with the Commissioner within said ten days, said assessment shall be conclusively deemed to be just and correct. The filing of a petition on a disputed assessment with the commissioner shall stay the distraint and sale proceeding provided for in this section until a final decision thereon shall have been made, but the filing of such a petition shall not affect the right of the commissioner to perfect a lien, as provided in section 14(b), upon the property of the employer. The issues raised by such petition shall be heard by the appeal tribunal, established in section 6 of this act, in the same manner and in accordance with the same procedure as is prescribed for appeals from benefit determinations, including the procedure set out in section 6 for review by the commissioner and the court."

Done under my hand this 7th day of October, 1941, at Olympia, Washington.

Commissioner of Unemployment Compensation and Placement by J. D. Davis (Authorized Representative). (Seal.)

Duplicate—Central Office Copy.

[fol. 3] RETURN OF SERVICE

STATE OF WASHINGTON,
County of King, ss:

I, L. W. Thomason, being first duly sworn, on oath depose and say: That I am and was at all times and dates herein mentioned, a citizen of the United States and of the State of Washington, over the age of twenty-one years, not a party to the within Notice of Assessment and competent to be a witness in any action that may be brought thereon; that I personally served the within notice on International Shoe Company, a corporation on the 14th day of October, 1941, in King County, Washington, by delivering to and leaving with

(1) Said —— —— personally;

(2) —— —— at the house of the usual abode of said —— —— in said —— County, Washington, said —— being a person of suitable age and discretion then resident therein;

(3) Each of said persons, personally;

(4) Edward S. Alley personally, he then and there being the salesman and agent in charge of the Seattle Office of said corporation, at 613 Terminal Sales Building

a full, true and correct copy of said notice.

Dated this 10th day of October, 1941.

L. W. Thomason.

Subscribed and Sworn to Before Me this 14th day of October, 1941. Justina Gardner, Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

[fol. 4] STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT

SPECIAL APPEARANCE, MOTION TO QUASH SERVICE AND OBJECTION TO THE JURISDICTION

International Shoe Company, 1509 Washington Avenue, St. Louis, Missouri.

To the Commissioner of Unemployment Compensation and Placement:

A copy of Notice by the Commissioner of Unemployment Compensation and Placement, was left with one, E. S. Alley, a salesman of the undersigned, International Shoe Company, at Seattle, Washington on October 10, 1941, demanding payment of delinquent contributions or interest in the sum of Six Thousand ($6,000) Dollars.

The International Shoe Company appears specially and moves to quash the service of the above mentioned Notice of Assessment upon the ground that the same was not served upon the corporation by delivering a copy thereof to the president, or other head of the corporation, secretary, cashier, managing agent, or any other agent, as required by law.

Upon the further ground that the International Shoe Company is a corporation, organized and existing under and by virtue of the Laws of the State of Delaware and is not engaged in business within the State of Washington; is doing only interstate business; has no agent or other person within the State of Washington upon whom service of process may be made; is not subject to suit or action within the State of Washington, nor subject to service of any special process.

[fol. 5] And further objection to the jurisdiction of the Commissioner to make such assessment and to give notice thereof, is made upon the ground that the International Shoe Company is not an Employer and does not furnish Employment within the State of Washington, within the meaning and scope of Chapter 162, Laws of 1937 as amended, and is therefore not subject to, and liable for, contribution under the Unemployment Compensation Act.

International Shoe Company requests a Hearing upon the above.

Dated at St. Louis, Missouri, this 18th day of October, 1941.

International Shoe Company, by Stern, Orton & Stern. By Allen Orton, Its Attorneys, 1605 Exchange Building, Seattle, Washington.

[fol.6] STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT

NOTICE TO APPEAR BEFORE THE APPEAL TRIBUNAL

Date December 1, 1941.

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE COMPANY

To Stern, Orton & Stern, Attorneys at Law. Interested as Attorneys for Petitioner, Exchange Building, Seattle, Washington.

Notice is hereby given that the above-entitled matter will come on regularly for hearing on Tuesday (Day), December 9, 1941 (Date), at 10 A. M. (Time) at Assembly Room (Place), 401 Smith Tower, in the City of Seattle, Washington.

You or your duly authorized representative should enter an appearance, at the time and place indicated, for the purpose of offering testimony and submitting in evidence all records, documents and other written matter pertaining to the issues raised by the said appeal. If you require additional information, please contact, at once, this office, or any office of the United States Employment Service.

Yours very truly, W. G. Preston, Executive Appeal Examiner.

WGP:JW.

[fols. 7-9] STATE OF WASHINGTON OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT

NOTICE TO APPEAR BEFORE THE APPEAL TRIBUNAL

Date December 1, 1941.

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE COMPANY

To International Shoe Company. Interested as Petitioner, 1509 Washington Avenue, St. Louis, Missouri.

Notice is hereby given that the above-entitled matter will come on regularly for hearing on Tuesday (Day), December 9, 1941 (Date), at 10 A. M. (Time) at Assembly Room (Place), 401 Smith Tower, in the City of Seattle, Washington.

You or your duly authorized representative should enter an appearance, at the time and place indicated, for the purpose of offering testimony and submitting in evidence all records, documents and other written matter pertaining to the issues raised by the said appeal. If you require additional information, please contact, at once, this office, or any office of the United States Employment Service.

Yours very truly, W. G. Preston, Executive Appeal Examiner.

WGP:JW.

[fol. 10] BEFORE THE APPEAL TRIBUNAL

OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, STATE OF WASHINGTON

P-46

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE CO.

This matter came on regularly for hearing at Seattle, Washington, on the 9th day of December, 1941, pursuant to notice duly given, before J. R. Walsh, Appeals Examiner. Samuel Klegman, Appeals Reporter.

The parties were represented as follows:

International Shoe Company by Allen Orton (Stern, Orton & Stern), Attorney, 1605 Exchange Bldg., Seattle, Wash: Unemployment Compensation Division by Wm. J. Millard, Jr., Asst. Attorney General and further by John F. Lindberg, Jr., Attorney, Old Capital Bldg., Olympia.

Witnesses were sworn and examined, and the following proceedings were had to-wit:

[fol. 11] Examiner Walsh: We will come to order, please. This hearing was scheduled as the result of a Petition for Hearing filed by the International Shoe Company. The record shows that an assessment was levied and served upon Edward S. Alley, a salesman and agent in charge of the Seattle office at 613 Terminal Sales Building, and a notice of assessment was served by registered mail on the company in St. Louis, requesting the payment of contributions to the Unemployment Compensation fund from January 1, 1937 to and including December 31, 1940.

From this notice of assessment the Petitioner duly filed a Petition for Hearing which is now properly before us for hearing. You may proceed.

Mr. Lindberg: Mr. Orton, I believe you talked to Mr. Millard about making a couple of changes in this stipulation as it now stands.

Mr. Orton: The stipulation as it now stands contains those two changes. Other than that they are exactly alike.

Mr. Lindberg: We can agree to the first change in the stipulation but we can't agree to the second change until you prove it, as that is contrary to the evidence in the prior hearing had in Spokane.

Mr. Orton: Has there been a hearing on the International Shoe Company in Spokane?

Mr. Lindberg: In Spokane, yes.

Examiner Walsh: There was a claim filed by a former employee, as I understand, and they heard his request for benefits.

Mr. Orton: May I suggest then that the stipulation be filed as it stands with leave to the International Shoe Company to offer proof of same.

[fol. 12] Mr. Lindberg: We are prepared to continue this until you find proof, until this afternoon or the next week.

Mr. Orton: I have no doubt that the proof can readily be

produced. We could have had it here this morning. I don't know what the significance of it is, but my clients insist that it be in there. I will be willing to submit the stipulation with that portion stricken, with leave to submit proof and I could submit the proof this afternoon if Mr. Alley is in the city, but he may not be here. I talked with him and did not think it necessary that he be here because we had all the facts stipulated. I could produce it this afternoon, otherwise I will ask for an extension for a few weeks.

Mr. Lindberg: Next week?

Mr. Orton: Next week.

Mr. Lindberg: That will be satisfactory.

Examiner Walsh: And the facts have all been stipulated.

Mr. Orton: All been stipulated with that exception and the exception is that portion of the stipulation—maybe I had better refer to it so that the record is clear. It is that portion of the stipulation which appears on——

Mr. Lindberg: Page 2.

Mr. Orton: (Continuing)—page 2, paragraph 3, commencing on the fifth line of said paragraph, and reading as follows:

> " * * * and are required as part of their duties to spend certain time each y ar in St. Louis, Missouri for the purpose of receiving direct personal instructions as to their duties, as to the line of shoes which they are to offer to the trade, the methods of selling, conditions of selling, and to receive information with reference to [fol. 13] construction and new types and kinds of shoes which are to be offered to the trade.

Mr. Lindberg: It will be satisfactory then to continue this.

Mr. Orton: May I ask whether it is proper procedure to submit a written brief on this and if so, what length of time will be allowed?

Examiner Walsh: May we have a brief from both sides? How long would you like to have?

Mr. Orton: Well, I could prepare my brief in a week's time, but we are conducting this proceeding in cooperation with Mr. O. Rumer, who is chief attorney for the International Shoe Company at St. Louis and if there is a brief we should submit it to him for his approval and that being the

case I should like additional time, I should say at least three weeks.

Examiner Walsh: That would be about the first of the year, then or would you have it in by December 31?

Mr. Orton: Well, I would like to have, if possible, it run into the first week of the next year. If we can have it on Tuesday, January 6, I would appreciate the extension of time.

Examiner Walsh: Does the State wish to put in a reply brief?

Mr. Lindberg: We could put in a reply brief by January 6.

Examiner Walsh: This copy is to be placed in the record?

Mr. Orton: Yes, I think it should be signed by the attorney general.

Examiner Walsh: The agreed stipulation of fact will be introduced as Exhibit No. 1, with the exception of that one [fol. 14] paragraph as read and that will be allowed to remain provided evidence is put in to support that?

Mr. Orton: That is correct, and as I understand it, we will offer to prove that and it is up to the Examiner to determine whether it is the truth or not. Is that not correct that we will offer to prove and he is to make the findings of proof, otherwise the facts are all stipulated?

Mr. Lindberg: Yes, that is right.

(Stipulation of Facts, marked Exhibit No. 1 for identification and admitted in evidence.)

Mr. Orton: And if you desire me to do so, I can go now and see if I can get Mr. Alley and see if we can finish it up today or not.

I will make the statement that my name is Allen Orton, with the law firm of Stern, Orton & Stern, attorneys for the International Shoe Company and I appear here specially pursuant to the Special Appearance, Motion to Quash and Objection to Jurisdiction and the appearance shall in no way be construed to be a general appearance to waive any jurisdictional claims that we make on behalf of our clients.

Examiner Walsh: We will continue this hearing at one o'clock.

[fol. 15] Seattle, Washington,
December 9, 1941,
1:00 P. M.

Mr. Orton: I will call Mr. Alley.

EDWARD S. ALLEY called as a witness in behalf of the Petitioner, being first duly sworn, testified as follows:

Direct examination.

By Mr. Orton:

Q. Will you state your full name, please?
A. Edward S. Alley.
Q. And you are an employee of the International Shoe Company?
A. The Friedmann-Shelby branch of the International Shoe Company, yes, sir.
Q. And how long have you been so employed?
A. I have been with the International Shoe Company since January 1, 1924 and with the Friedmann-Shelby branch of the International Shoe Company since June of 1936.
Q. How long have you been in the State of Washington?
A. Have been in the State of Washington since June of 1936.
Q. And you are a salesman employed by them?
A. That is right, that is right.
Q. I see.

Mr. Orton: I might state, Mr. Millard, that there is no necessity of going into his duties. He is here only for the purpose of proving one fact.

[fol. 16] By Mr. Orton:

Q. Do you go to St. Louis at all?
A. Yes, sir, have been required to go to St. Louis either once or twice a year with the exception of this year. I was supposed to leave this coming Thursday night for St. Louis for our regular instruction meeting but due to this emergency, the sales manager was out here today and cancelled this meeting. With this one exception, we are required to go either once or twice a year depending on the conditions of our work.
Q. And the same is true with the other employees?

A. Yes, with all of them. If our territories are not doing too well, we have to go twice. They figured we need more instruction and if we are doing well, they let us go sometimes, and we go only once a year.

Q. That is true whether it is the brangh that you are connected with or any other branch?

A. The meetings are at the same time. When those of the Friedmann-Shelby go to St. Louis for their instructions, the other branches come at the same time and they have their meetings in different hotels. We will usually use the DeSoto or the Jefferson, Peters at the Coronado and the Robert Johnson Rand down at the Statler.

Q. They work, the meetings at the same time?

A. Yes, that is true.

Q. Just what do they tell you, just what is the nature of the meetings?

A. We have a general meeting first. We will open with a general meeting for all the different divisions, the northern division and western division, southern division, depending on the branch. Then after a general meeting they have a general meeting just for that branch. That is, the general manager makes talks generally about general conditions and what we have done and what they have hoped to do, and usually some one of the International men will come in and talk [fol. 17] to us, for instance, the hide buyer tells what the hide situation looks like and then we may have some of the other executives. Then after the first general meeting, we have a lot of what we call group meetings. They divide us up into various grou-s, small units and each group has a captain, and they rotate us. For instance. I am in group No. 5, why I will be in a merchandising meeting where there will be a style man, and he will be telling us about the style trends for the coming season, what colors for instance are going to sell, what kind of patterns, and while he is talking to my group, some other man is talking on women shoes in another group.

Then from that meeting that I have attended, possibly on women shoes, I will go to a meeting on men's shoes, and they will tell us about men's shoes, new lasts that have been added and changes that have been made in construction, widths that have been added to some particular patterns selling big and from there we go to one on children's shoes, juvenile shoes. From there on work shoes and that probably would take about two days and the next day we have

a general meeting in charge of the advertising manager. He tells us about the national campaign that they are going to run for that season, or some new promotional plan or direct mill tie-up that we are making, and probably assign us advertising quotas while there and then we would go from that meeting perhaps to a manufacturer's meeting, where Mr. Quinn probably would tell us about a new factory we have, two new factories in there, telling us about these two new factories, the new equipment that we have, and the improvement that it would make in shoes, and why they felt it necessary to bring in these new units.

[fol. 18] And then in the usual order we have what we call a house slipper meeting under the direction of Mr. Norton and he would tell us about our house slipper line and this year we are bringing in a lot of play shoes, play types, something new with us, with rubber soles, and he would explain the set-up and the prices and terms and after that, we would have one day, where we have to see every department manager in our branch. They give us a card, now, on this card it has the general manager's name, and it has the sales manager's name, and the credit manager's name, merchandise manager's name, the advertising manager's name and then on the bottom is the cashier's name. We have to see each one of these men personally, starting with the general manager, which is just general information, the conditions in our territory, how we are getting along, how the family is and that sort of thing, then we go to our sales manager and if we are not doing too well, then there is a real honest too goodness session. If you are doing well, he will pass us off with a little congratulation, if not, why then he goes over the territory town by town. He asks what the matter is with Puyallup, Port Angeles, or will say, "What is the matter, you are not getting the volume out of Seattle," all that sort of thing. We take it up with him, any particular problems, anything that is wrong and that needs correcting. Finally, he signs your card, the general manager, and we go to the credit manager and then we really have something.

We go over each account, the accounts that you figure that he is not giving enough credit, that you could double your volume if they gave you $500 more credit on him and you fight that out, and other accounts, they say they should not ship at all, and you put up a fight to keep him on the [fol. 19] credit list and when you are through with him, he

signs your card and then you go on down the line with each one, merchandise manager, he usually gives you a lot of awfully good information about what to sell and how much to sell, he takes your individual section into consideration and covering more than he would in a general meeting for everybody. After all, what they sell in Florida doesn't interest me in Seattle, and they leave that out. Then the correspondence department, you have to go there. He brings out maybe that you have not answered your mail. He pulls out your folder, and he has a stack of files that need to be cleaned up, and go over them personally and takes it piece by piece and makes a definite decision on each one, clearing that all up. And finally after you are all through you can take your card to the cashier and he signs it and he gives us our expense money. That is the way you get your expense money, when you prove you are through.

Q. That is the pleasantest call.

A. That that is probably along in the afternoon, and then that night we have a general banquet where we have an inspirational social time, big boys all wishing us well and we have a big dinner and then the next morning we have until noon to clean up everything that we have not gotten to, they give us that night, and the next morning we have to think over anything what we have overlooked, clear that up and then we are to be out of there that night sometime, any time after that why we are free to go when we can. They want everybody out of town that night, and those conventions are held twice a year. We were due for this year for the 15th of December for our spring convention and the one for the fall line I believe was to have been in May, depending on conditions and this last year in May and as I say, I received instructions to leave for St. Louis [fol. 20] this coming Thursday night, to be in St. Louis by Sunday to attend this convention and when all this emergency came up, the boss, Mr. Williams, came out here, and he has wired me to stay here, that Mr. Williams was coming here, and he told me this morning, in view of this emergency and uncertain conditions, they had cancelled the convention and that is the only exception since I have been out here.

Mr. Orton: I have no further questions. Did you desire to ask any questions?

Cross-examination.

By Mr. Millard:

Q. You have been in the employ of the company since 1936 and the years we are interested in are years '37, '38, '39 and '40?

A. Yes, sir.

Q. During '37, '38, '39 and '40, did you go back to St. Louis at least once each year?

A. Yes, sir, I did.

Q. Did all other salesmen employed in the state such as yourself go back?

A. Yes, sir, there have been no cancelled conventions during those years.

Mr. Millard: I have no further questions.

Mr. Orton: That is all.

(Witness excused.)

Examiner Walsh: The statement of facts as entered here will be agreed as complete and all the paragraphs are agreed upon?

Mr. Orton: Is that satisfactory to you, Mr. Millard?

Mr. Millard: Yes.

[fol. 21] Mr. Orton: Then this shall be taken as the sole evidence in this case.

Mr. Millard: That is satisfactory. It is so stipulated that the stipulation entered into between the State of Washington and the International Shoe Company through their respective counsel plus the testimony of Mr. Alley shall constitute the full facts in this matter.

Examiner Walsh: The record will be closed.

[fol. 22] EXHIBIT No. 1

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT

No. P-46

In the Matter of the Special Appearance, Motion to Quash and Objection to Jurisdiction of International Shoe Company.

STIPULATION OF FACTS

It Is Hereby Stipulated, by and between the Commissioner of Unemployment Compensation and Placement of the State of Washington, through the Attorney General of the State of Washington, and the International Shoe Company, through Stern, Orton & Stern, its attorneys, as follows:

I

This stipulation of facts is made for the purpose of presenting to the appeal examiner and such other tribunals as this matter may come before on appeal, or otherwise, questions raised in this proceeding by the special appearance, motion to quash service and objection to the jurisdiction filed in this proceeding by the International Shoe Company and it is specifically understood and agreed that the stipulation of facts shall not constitute a general appearance by the International Shoe Company, but that it, at all times retains such rights as it may have under the special appearance referred to.

II

International Shoe Company is a Delaware Corporation. It has its principal place of business in the City of St. Louis, Missouri. Its principal business consists of manufacture and sale of boots, shoes and other footwear. It maintains places of business where manufacturing is carried on and from which its merchandise is sold in the states of Missouri, Arkansas, Illinois, Kentucky, North Carolina, Pennsylvania, New York and New Hampshire. Its merchandise is sold through its several selling divisions or branches, the following branches being the only ones doing

[fol. 23] any sort of business with residents of the State of Washington.

Roberts, Johnson & Rand
Peters
Friedmann-Shelby
Specialty

It has not a place of business in the State of Washington; maintains no general agent in the State of Washington. It makes no contracts, either of sale or of purchase in the State of Washington. It maintains no stock of merchandise in the State of Washington and makes no deliveries of merchandise in intrastate commerce in the State of Washington. Attached hereto, marked Exhibit "A," referred to and by reference incorporated herein as though fully set forth, is a statement of all travelling salesmen, residing in, and whose principal activities have been within the State of Washington for the year 1937, 1938, 1939 and 1940. Said statement gives the names of each employee, the amount earned by the said employees, a compilation of the potential tax due the State of Washington, if any tax be due, the Social Security numbers of the employees and the amount paid to the Federal Government under Title # 9, of the Federal Social Security Act.

III

The manner in which the business of International Shoe Company is carried on in the State of Washington, is generally as follows:

Salesmen are employed from the head office at St. Louis and work under the direct supervision and control of sales managers with offices in St. Louis, and are required as part of their duties to spend certain time each year in St. Louis, Missouri for the purpose of receiving direct personal instructions as to their duties, as to the line of shoes which they are to offer to the trade, the methods of selling, conditions of selling, and to receive information with reference to construction and new types and kinds of shoes which are to be offered to the trade. Said employees or salesmen are given a sample line, which samples uniformly consist of only one shoe of a pair, and no sales are made by salesmen from such samples. They are merely used to display to pro-[fol. 24] spective purchasers. Some of the salesmen rent

sample rooms in business buildings and the expenses of such rental and maintenance is paid by the salesmen and they are reimbursed on an expense account by the International Shoe Company. Other salesmen maintain no permanent sample rooms, but rent rooms in hotels or business buildings in the various cities to which they travel.

IV

Such transactions as the International Shoe Company has with persons in business, or who reside in the State of Washington, involving the sale and distribution of its merchandise to merchants in the State of Washington and are conducted as follows.

Each salesman is given a designated territory in which to solicit orders. The authority of the salesman is limited to exhibiting samples of the merchandise for which they solicit orders to merchants who are probable buyers thereof; endeavor to procure orders on prices and terms fixed by the International Shoe Company. If orders are obtained, to transmit them to the office of the International Shoe Company outside the State of Washington for acceptance or rejection, and if orders are accepted by the International Shoe Company the merchandise called for by such orders is shipped F. O. B., shipping point, from outside of the State of Washington. Practically all merchandise shipped by International Shoe Company into the State of Washington is on orders approved in St. Louis, Missouri and shipped therefrom. The merchandise which is shipped into Washington is invoiced at the point of shipment and invoices are payable at point of shipment from which point collections are made. No salesman has power or authority to bind the International Shoe Company to any contract or to finally conclude any transactions in its behalf, the salesman's duties and authority being limited strictly to the solicitation of orders.

The salesmen are under the direct control and direction of the International Shoe Company and are not permitted [fol. 25] to be engaged in an independently established trade, occupation, profession or business of the same nature involved in their employment by the International Shoe Company.

V

On October 10, 1941, a copy of Notice of Assessment by the Commissioner of Unemployment Compensation and Placement, was delivered to an left with one, E. S. Alley, a salesman of the International Shoe Company, at Seattle, Washington, demanding payment of delinquent contributions or interest, in the sum of $6000. Said sum was not arrived at by calculation of the wages earned by salesmen of the International Shoe Company within the State of Washington, but was an arbitrary figure set by the Commissioner. E. S. Alley is a salesman of the International Shoe Company, employed upon the terms and under the authority and for the purpose as hereinabove referred to for employees of International Shoe Company within the State of Washington. A copy of the same notice of assessment was also placed in the United States mails, postage fully prepaid, addressed to International Shoe Company at St. Louis, Missouri, on the 10 day of October, 1941. Thereafter, and on the 18th day of October, 1941, International Shoe Company filed with the Department of Unemployment Compensation and Placement, its special appearance, motion to quash service and objection to jurisdiction.

Unemployment Compensation and Placement Division, by John F. Lindberg. International Shoe Company, by Allen Orton of Stern, Orton & Stern, Its Attorneys.

Missouri Sales Unit Represented	Salesman's S. S. Number	Name of Salesman	Earnings for Year: Up to $3,000	Excess of $3,000	Total
R. J. & R.	493-01-1830	Carl A. Ebeling	3,000.00	734.76	3,731.76
"	492-01-5587	Carl W. Hall	2,307.44		2,307.44
"	493-01-1836	John H. Hall	3,000.00	620.93	3,620.93
"	492-01-5984	Bernard J. Kelley	3,000.00	270.89	3,270.89
"	497-10-8838	Maxwell J. Masterson	350.00		350.00
Peters	494-01-3867	Earl Elton McDonough	2,783.68		2,783.68
"	492-01-5992	Burt Mitchell McKay	3,000.00	225.95	3,225.95
"	497-01-6281	Joshua Thomas Rackam	2,801.36		2,801.36
F. Shelby	489-01-2268	Edward Shaw Alley	2,486.93		2,486.93
"	494-05-8081	Oscar Karl Anderson	779.24		779.24
"	492-01-9076	Harry Bernard Swanson	3,000.00	1,258.71	4,258.71
Specialty	492-01-9075	Allen K. Umphrey	3,000.00	3,481.30	6,481.30
		Total	$29,508.65	$6,589.54	$36,098.19
		Washington State Rate			1.8%
		Potential State Tax			$649.77
		(2% Federal Tax $721.96 paid to Federal Government)			
"D"					
R. J. & R.	493-01-1830	Carl A. Ebeling	3,000.00	90.59	3,090.59
"	492-01-5587	Carl W. Hall	2,036.43		2,036.43
"	493-01-1836	John H. Hall	3,000.00	307.45	3,307.45
"	492-01-5984	Bernard J. Kelley	3,000.00	592.81	3,592.81
Peters	494-01-3867	Earl Elton McDonough	2,636.13		2,636.13
"	492-01-5992	Burton Mitchell McKay	3,000.00	103.14	3,103.14
"	497-01-6281	Joshua Thomas Rackam	2,466.23		2,466.23
F. Shelby	489-01-2268	Edward Shaw Alley	2,501.13		2,501.13
"	494-05-8081	Oscar Karl Anderson	1,223.19		1,223.19
"	492-01-9076	Harry Bernard Swanson	3,000.00	966.02	3,966.02
Specialty	492-01-9075	Allen K. Umphrey	3,000.00	1,152.51	4,152.51
		Total	$28,862.11	$3,212.52	$32,075.63
		Washington State Rate			2.7%
		Potential State Tax			$866.04
		(3% Federal Tax $962.27 paid to Federal Government)			

Traveling Salesmen
State of Washington
Commissions Paid - 1937

Missouri Sales Unit Represented	Salesman's S.S. Number	Name of Salesman	Earnings for Year: Up to $3,000	Excess of $3,000	Total
"E"					
R. J. & R.	493-01-1830	Carl A. Ebeling	3,000.00	103.52	3,103.52
"	492-01-5587	Carl W. Hall	2,169.24		2,169.24
"	493-01-1836	John H. Jall	3,000.00	607.17	3,607.17
"	492-01-5984	Bernard J. Kelley	3,000.00	990.64	3,990.64
Peters	494-81-3867	Earl E. McDonough	2,825.45		2,825.45
"	492-01-5992	Burt M. McKay	765.40		765.40
"	497-01-6281	Joshua T. Rackam	2,697.92		2,697.92
"	493-01-1860	Raymond C. Thatcher	1,381.17		1,381.17
F. Shelby	489-01-2268	Edward S. Alley	2,511.23		2,511.23
"	494-05-8081	Oscar K. Anderson	615.43		615.43
"	547-07-1871	Frederick W. Richards	1,061.99		1,061.99
"	492-01-9076	Harry B. Swanson	3,000.00	1,081.95	4,081.95
Specialty	492-01-9075	Allen K. Umphrey	3,000.00	2,035.33	5,035.33
		Total	$29,027.83	$4,818.61	$33,846.44
		Washington State Rate			2.7%
		Potential State Tax			$913.85

(3% Federal Tax $1,015.39 paid to Federal Government)

[fol. 27]

Missouri Sales Unit Represented	Salesman's S. S. Number	Name of Salesman	Earnings for Year. Up to $3,000	Excess of $3,000	Total
R. J. & R.	493-01-1830	Carl A. Ebeling	2,518.43		2,518.43
"	492-01-5587	Carl W. Hall	2,006.92		2,006.92
"	493-01-1836	John H. Hall	3,000.00	605.21	3,605.21
"	492-01-5984	Bernard J. Kelley	3,000.00	441.23	3,441.23
Peters	494-01-3867	Earl E. McDonough	2,469.27		2,469.27
"	497-01-6281	Joshua T. Rackam	2,676.90		2,676.90
"	493-01-1860	Raymond C. Thatcher	2,268.44		2,268.44
F. Shelby	489-01-2268	Edward S. Alley	2,474.06		2,474.06
"	547-07-1871	Frederick W. Richards	607.51		607.51
"	492-01-9076	Harry B. Swanson	3,000.00	902.68	3,902.68
Specialty	492-01-9075	Allen K. Umphrey	3,000.00	2,908.54	5,908.54
		Total	$27,021.53	$4,857.66*	$31,879.19
		Washington State Rate			2.7%
		Potential State Tax			$729.58

*Contributions subject to $3,000.00 limitation in 1940
(3% Federal Tax $810.65 paid to Federal Government)

Commissions Paid—1937-1938-1939-1940

Missouri Sales Unit Represented	Wages Under $3,000	Wages Over $3,000	Taxable Wages	Non-Taxable Wages	Rate	Amount of Tax
1937						
PR. J. & R.	$11,657.44	$1,623.58	$13,281.02			
Peters	8,585.04	225.95	8,810.99			
F. Shelby	6,266.17	1,258.71	7,524.88			
Specialty	3,000.00	3,481.30	6,481.30	—	1.8%	$649.77
Total	$29,508.65	$6,589.54	$36,098.19			
1938						
R. J. & R.	$11,036.43	$990.85	$12,027.28			
Peters	8,012.36	103.14	8,205.50			
F. Shelby	6,724.32	9[illegible]3.02	7,690.34			
Specialty	3,000.00	1,152.51	4,152.51			
Total	$28,863.11	$3,212.52	$32,075.63	—	2.7%	$866.04
1939						
R. J. & R.	$11,169.24	$1,701.33	$12,870.57			
Peters	7,669.94	—	7,669.94			
F. Shelby	7,188.65	1,081.95	8,270.60			
Specialty	3,000.00	2,035.33	5,035.33			
Total	$29,027.83	$4,818.61	$33,846.44	—	2.7%	$913.85
1940						
R. J. & R.	$10,525.35	$1,046.44	$10,525.35	$1,046.44		
Peters	7,414.61	—	7,414.61	—		
F. Shelby	6,061.57	902.68	6,081.57	902.68		
Specialty	3,000.00	2,908.54	3,000.00	2,908.54		
Total	$27,021.53	$4,857.66	$27,021.53	$4,857.66	2.7%	$729.58
Grand Total	$114,421.12	$19,478.33	$129,041.76	$4,857.66		$3,159.24

Appeal Tribunal Office of
Unemployment Compensation and
Placement Exhibit 1
Docket P-46
Introduced by Petitioner

[fol. 28] BEFORE THE APPEAL TRIBUNAL
OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT,
STATE OF WASHINGTON

Docket No. P-46

FINDINGS OF FACT AND DECISION

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE COMPANY

Pursuant to notices to all interested parties, this matter came on regularly for hearing on the 9th day of December, 1941, at Seattle, Washington, before John R. Walsh, Appeal Examiner, who was duly assigned by the Commissioner of Unemployment Compensation and Placement of the State of Washington to hear the said matter.

The Petitioner, International Shoe Company, was represented by Allen Orton (Stern, Orton & Stern) Attorney, 1605 Exchange Building, Seattle.

The Unemployment Compensation Division was represented by William J. Millard, Jr., Assistant Attorney General, and John F. Lindberg, Jr., Attorney, Old Capitol Building, Olympia.

Statement of the Case:

A Notice of Assessment was issued pursuant to Section 14(c) of the Unemployment Compensation Act by the Commissioner of Unemployment Compensation and Placement demanding payment from the International Shoe Company of the sum of $6,000.00 as delinquent contributions due the Unemployment Compensation Fund. A copy of this notice was served upon E. S. Alley, a salesman for the company at Seattle on October 10, 1941, and a copy of the notice was also mailed to the company at St. Louis, Missouri. Thereafter, on October 18, the company filed a special appearance, motion to quash service and objection to jurisdiction.

Findings of Fact:

It was stipulated by and between the International Shoe Company and the Commissioner of Unemployment Compen-
[fol. 29] sation and Placement through their respective at-

torneys that the Stipulation of Facts, introduced at the hearing and made a part of the record, contains all the facts in the matter.

The facts show the following:

H

"International Shoe Company is a Delaware Corporation. It has its principal place of business in the City of St. Louis, Missouri. Its principal business consists of manufacture and sale of boots, shoes and other footwear. It maintains places of business where manufacturing is carried on and from which its merchandise is sold in the states of Missouri, Arkansas, Illinois, Kentucky, North Carolina, Pennsylvania, New York and New Hampshire. Its merchandise is sold through its several selling divisions or branches, the following branches being the only ones doing any sort of business with residents of the State of Washington:

Roberts, Johnson & Rand
Peters
Friedmann-Shelby
Specialty

"It has not a place of business in the State of Washington; maintains no general agent in the State of Washington. It makes no contracts, either of sale or of purchase in the State of Washington. It maintains no stock of merchandise in the State of Washington and makes no deliveries of merchandise in intrastate commerce in the State of Washington. Attached hereto, marked Exhibit 'A,' referred to and by reference incorporated herein as though full set forth, is a statement of all travelling salesmen, residing in, and whose principal activities have been within the State of Washington for the year 1937, 1938, 1939 and 1940. Said statement gives the names of each employee, the amount earned by the said employees, a compilation of the potential tax due the State of Washington, if any tax be due, the Social Security numbers of the employees and the amount paid to the Federal Government under Title # 9, of the Federal Washington Security Act.

III

The manner in which the business of International Shoe Company is carried on in the State of Washington, is generally as follows:

"Salesmen are employed from the head office at St. Louis and work under the direct supervision and control of sales managers with offices in St. Louis, and are required as part of their duties to spend certain time each year in St. Louis, Missouri for the purpose of receiving direct personal instructions as to their duties, as to the line of shoes which they are to offer to the trade, the methods of selling, conditions of selling and to receive information with reference to construction and new types and kinds of shoes which are to be offered to the trade. Said employees or salesmen are given a sample line, which samples uniformly consist of only one shoe of a pair, and no sales are made by salesmen from such samples. They are merely used to display to prospective purchasers. Some of the [fol. 30] salesmen rent sample rooms in business buildings and the expenses of such rental and maintenance is paid by the salesmen and they are reimbursed on an expense account by the International Shoe Company. Other salesmen maintain no permanent sample rooms, but rent rooms in hotels or business buildings in the various cities to which they travel.

IV

"Such transactions as the International Shoe Company has with persons in business, or who reside in the State of Washington, involving the sale and distribution of its merchandise to merchants in the State of Washington and are conducted as follows:

"Each salesman is given a designated territory in which to solicit orders. The authority of the salesman is limited to exhibiting samples of the merchandise for which they solicit orders to merchants who are probable buyers thereof; endeavor to procure orders on prices and terms fixed by the International Shoe Company. If order(s) are obtained, to transmit them to the office of the International Shoe Company outside the State of

Washington for acceptance or rejection and if orders are accepted by the International Shoe Company the merchandise called for by such orders is shipped F. O. B. shipping point, from outside of the State of Washington. Practically all merchandise shipped by International Shoe Company into the State of Washington is on orders approved in St. Louis, Missouri and shipped therefrom. The merchandise which is shipped into Washington is invoiced at the point of shipment and invoices are payable at point of shipment from which point collections are made. No salesman has power or authority to bind the International Shoe Company to any contract or to finally conclude any transactions in its behalf, the salesman's duties and authority being limited strictly to the solicitation of orders.

"The salesmen are under the direct control and direction of the International Shoe Company and are not permitted to be engaged in an independently established trade, occupation, profession or business of the same nature involved in their employment by the International Shoe Company.

V

"On October 10, 1941, a copy of Notice of Assessment by the Commissioner of Unemployment Compensation and Placement, was delivered to an(d) left with one, E. S. Alley, a salesman of the International Shoe Company, at Seattle, Washington, demanding payment of delinquent contributions or interest, in the sum of $6000. Said sum was not arrived at by calculation of the wages earned by salesmen of the International Shoe Company within the State of Washington, but was an arbitrary figure set by the Commissioner. E. S. Alley is a salesman of the International Shoe Company, employed upon the terms and under the authority and for the purpose as hereinabove referred to for employees of International Shoe Company within the State of Washington. A copy of the same notice of assessment was also placed in the United States mails, postage fully prepaid, addressed to International Shoe Company at St. Louis, Missouri, on the 10 day of October, 1941. Thereafter, and on the 18th day of October, 1941, International Shoe Company filed with the Department of Unemployment Compensation and Placement, its

special appearance, motion to quash service and objection to jurisdiction."

[fol. 31] The stipulation shows that if contributions are due from the company, the correct amount thereof for the years 1937 through 1940 is the sum of $3,159.24.

Conclusions:

The International Shoe Company, hereinafter referred to as the petitioner, has made a special appearance and a motion to quash the Notice of Tax Assessment and objects to the jurisdiction of the state and the Department of Unemployment Compensation and Placement over the company.

In the briefs filed in support of its contentions it is argued by the petitioner that the service of the notice was ineffectual to confer jurisdiction upon the department. The record shows that a Notice of Assessment was served upon Mr. E. S. Alley, a salesman of the petitioner with his headquarters in Seattle, and a copy of the notice was forwarded by registered mail to the petitioner in St. Louis, Missouri.

Section 14(c) of the Act Provides that the Notice of Assessment shall be served upon the employer in the manner prescribed for the services of summons in a civil action, except that if the employer cannot be found within this state, said notice shall be deemed served when mailed to the delinquent employer at his last known address by registered mail. 2 Remington's Revised Statutes, Section 226, relative to service of process upon a foreign corporation, provides as follows:

> "(a) If the suit be against a foreign corporation or non-resident stock company or association, *doing business within the state*, to any agent, cashier or secretary thereof." (Emphasis ours)

The petitioner does not content that notice was not served in the manner provided by law, but does maintain that the agent upon whom process was served had no authority to bind the company and the company is not "doing business within the state," has no license to function as a corpora-
[fol. 32] tion in the state and may not be subjected to process or to the taxing powers within the state.

The petitioner also contends that it is not an employer within the intent and spirit of the statute as it does not employ anyone in the state.

Section 19(e) of the Act as originally enacted defines "Employing unit" as any individual or type of organization whether domestic or foreign which has or had, subsequent to January 1, 1937, eight or more (and as amended in 1939, one or more) individuals performing service for it within this state.

Section 19(f) (1) of the Act as amended provides as follows:

"(f) 'Employer' means:

"(1) Any employing unit which in each of twenty ~~different weeks within either the current~~ or the preceding calendar year (whether or not such weeks are or were consecutive) has or had in employment eight or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week)."

Section 19(g) provides in part as follows:

"(1) 'Employment,' subject to the other provisions in this subsection, means service, including service in interstate commerce, performed for wages or under any contracts of hire, written or oral, express or implied.

"(2) The term 'employment' shall include an individual's entire service performed within or both within and without this state if:

"(i) The service is localized in this state; or

"(ii) The service is not localized in any state but some of the service is performed in this state and

"(a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

"(b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state."

The stipulation of facts shows that the petitioner had eight [fol. 33] or more individuals, residents of this state, performing services for it during the year 1937 and subsequent years. It is contended that they were not employed nor sub-

ject to any control in this state but were employed and controlled by the petitioner at St. Louis, Missouri. However, in our opinion, the services performed by the salesmen of the petitioner constituted "employment" within the meaning of Section 19(g). The men were residents of this state and their services were all performed in this state.

It is not contended by the petitioner that the services of its salesmen would not be "employment" if the corporation was a resident of the state or subject to its jurisdiction. In fact, it seems apparent from the record that under the sections of the Act quoted above the salesmen were in "employment" subject to the Act and contributions are due from the petitioner if it is subject to the jurisdiction of the state. The petitioner contends it is not a resident of the state, is not "doing business in the state" and is not subject to the jurisdiction of the state or this department. However, we are unable to discover any provision in the Unemployment Compensation Act that makes it necessary to find that the employer must be a resident of the state or subject to its jurisdiction in order to make a determination that its employees are in "employment" and that contributions are payable on their wages. The Act makes coverage dependent on the place in which and circumstances under which services are rendered by the employee and not on the location of the employer.

The Act, insofar as it relates to the petitioner, provides, in effect, that any foreign corporation which is an employing unit and which in each of twenty different weeks in the current or preceding calendar year had eight or more individuals performing services for it for wages in this state, including service in interstate commerce, is an employer. The petitioner was an employing unit and had eight individuals performing services for it for wages in [fol. 34] twenty different weeks in 1937 and subsequent years, and these services constituted employment under Section 19(g).

The petitioner, in its argument, states as follows:

"The whole context of the statute contemplates or implies the presence and existence, either actually or constructively, of an 'employer' and his 'employees' within the State and under its jurisdiction. The employment is supposed to be engaged in within the State, and it is upon this employment that the law is intended to protect and provide for."

If we accept that statement as a correct interpretation of what the statute contemplates, we believe it is apparent that the petitioner qualifies as an "employer" under the Act and that contributions are due on remuneration payable to its employees. The employees are actually within the state and the services—solicitation of orders—are performed in the state and, we believe, the employer is constructively, at least, in this state and subject to its jurisdiction.

If, as we believe, the petitioner has qualified as a liable employer under the Act by having eight or more individuals in employment in the state in each of twenty different weeks during 1937, then it has become liable for contributions. It would seem reasonable to hold that in becoming liable for a tax it has become subject to the jurisdiction of the state and is amenable to process in a proceeding to collect that tax.

The petitioner contends that the greater weight of authority holds that a foreign corporation doing business, as is the petitioner here, is not "doing business in the state", within the purview of the statute concerning the service of process. It is further contended that as the corporation has taken no steps to come within the state and to function as a licensed corporation, it is a non-resident and not subject to the jurisdiction of the state.

The petitioner and the Unemployment Compensation Division have cited and discussed in their briefs a number of cases involving the question of "doing business in the state." It seems to us, from what appears to be the leading cases, that the question depends to a considerable extent in [fol. 35] each instance upon the issues involved and the nature of the action. A number of the decisions make a distinction between those cases involving an attempt by the state to regulate or impose a burden upon interstate commerce and those merely attempting to bring the corporations within the jurisdiction of the courts where no question of regulation or undue burden is involved. As stated in the case of *State v. Scott*, 98 Tenn. 254, 39 S. W. 1, as reported in 60 A. L. R. at P. 995:

"Whether or not a foreign corporation is 'doing business' within a state depends upon the issues involved in the proceedings in which the question is raised. Such a corporation may be doing business within the state so as to be subject

to the jurisdiction of the local courts and amenable to services of process therein, and yet not be subject to a statute regulating foreign corporations or prescribing conditions of their doing business within the state."

As stated by the petitioner in its reply brief, it does not quarrel with this distinction (P. 4, L. 14).

The case of *International Harvester Company of America v. Kentucky*, 234, U. S. 579, seems to be one of the leading cases on the question of "doing business" in the state. The company transacted business in a manner similar to that of the petitioner herein and moved to quash service of summons on an agent. The salesmen were allowed, in addition to soliciting orders, to collect money owing the company and to accept notes, which fact may have influenced the court to find that the service was proper. However, in regard to the contention that the corporation was engaged in interstate commerce and therefore not amenable to process, the court said:

"The contention comes to this: so long as a foreign corporation engaged in interstate commerce only, it is immune from the service of process under the laws of the state in which it is carrying on such business. This is indeed, as was said by the court of appeals of Kentucky, a novel proposition, and we are unable to find a decision to support it, nor has one been called to our attention.

"True it has been held time and again that a state cannot burden interstate commerce or pass laws which amount to the regulation of such commerce; *but this is a long way from holding that the ordinary process of the courts may not reach corporations carrying on business within the state which is wholly of an interstate commerce* [fol. 36] *character.* Such corporations are within the State, receiving the protection of its laws, and may, and often do, have large properties located within the state: (cases cited.)

"We are satisfied that the presence of a corporation within a state necessary to the service of process is shown *when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the state*, although the business transacted may be entirely interstate in its character. In other words, this fact alone does not render the corporation immune from the ordinary

process of the courts of the state." (34 Sup. Ct. Rep. P. 946.) (Emphasis ours.)

The court in *American Asphalt Roof Corporation vs. Shankland*, 205 Iowa 862, 249 N. W. 28, stated in commenting on the fact that the salesmen in the International Harvester Case were also authorized to receive notes and money:

"*Such transactions were, however, merely formal acts and involved the exercise of no discretion* on the part of the agent, and were always referable to transactions closed by the approval of the order, and, no doubt generally by the delivery of the machines. *These transactions are not given significance in what the court terms a continuous course of business——.*"

It has been held by our supreme court that the provisions of the law requiring the payment by corporations of an annual license fee before being permitted to commence or maintain an action in any court of this state has reference only to corporations "doing business in this state." (*Lilly-Brackett Company vs. Sonnemann*, 50 Wash. 487). In *Smith & Company vs. Dickinson*, 81 Wash. 465, the court held that the company, whose operations were somewhat similar to those of the petitioner herein, was not doing business in this state within the meaning of the statute; that the legislature in enacting the law did not intend to impose a burden upon interstate commerce and that otherwise the court would be obliged to hold it unconstitutional as in violation of the commerce clause of the federal constitution. It has been decided in a great number of cases that the states cannot impose certain taxes on concerns engaging in interstate commerce, such as a tax on the privilege of doing business in the state, sales taxes, et cetera.

The petitioner contends that under the above ruling of the court the Unemployment Compensation Act would like-[fol. 37] wise be unconstitutional insofar as it attempts to impose a tax upon the petitioner. However, the Act does not impose a tax on the privilege of doing business in the state nor does it attempt to regulate the doing of business, but it provides for an excise tax on the right to have persons in employment in the state.

Neither do we believe the tax imposes a burden upon the interstate commerce business of the petitioner such as

would a license fee or sales tax. The petitioner has paid the taxes provided for in the federal Act; and, had it paid the tax to this state, would have been entitled to credit therefor on the federal tax so that, in effect; the state tax is not imposing any added burden on the petitioner.

The petitioner contends that while the Act (Sec. 19(g)) provides that "employment" shall include services in interstate commerce, it does not apply to employers who are non-residents.

The Unemployment Compensation Act is not an isolated state taxing act. It is part of a federal-state plan for unemployment insurance. The court in *Buckstaff Bath House vs. McKinley*, 308 U. S. 358, states as follows:

"As part of the 'unitary plan,' the Federal Congress has provided:

"'No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce" (Section 1606(a) Internal Revenue Code).

The purpose and intent of both the federal and state Acts are clear—to impose taxes on the remuneration paid all workers not specifically exempt and to provide them with unemployment compensation benefits if they become involuntarily unemployed. If the contention of petitioner is correct, we would have the peculiar situation of an employer paying a tax for unemployment compensation; but its employees would be unable to collect benefits even if otherwise eligible. This would be manifestly unfair both to the employers and their employees and is clearly con- [fol. 38] trary to the intent of the federal Act. While that Act imposes a tax, it does not provide a direct means of paying benefits to workers, but encourages the states to enact their own unemployment compensation laws so that employers may obtain credit on the federal tax for payments made to the states and thus enable their employees to obtain benefits. To hold that individuals employed in interstate commerce could not be brought under a state Act would deprive a large group of workers of the benefits of

unemployment compensation legislation. It seems apparent that it was the intent of the Congress to permit the states to require the payment of the tax on remuneration for services rendered in interstate commerce, provided those services constituted "employment."

A number of other cases have been cited by counsel, but we believe it sufficient to say that, in our opinion, the weight of authority holds that a foreign corporation doing business in the state, as is the petitioner here, is "doing business" so as to make it amenable to process. As the court said in *Lamont* v. *S. R. Moss Cigar Company*, 218 Ill. App. 435:

"The law that exempts interstate commerce corporations from the need of a state license does not exempt them from service of process issued by a state court; they have no such immunity."

The question has also been raised by the petitioner as to the sufficiency of service on one of its salesmen on the theory that as his activities do not involve the corporation in "doing business in the state" he is not an agent or representative here upon whom process against the corporation may be served.

We have concluded that the petitioner is "doing business in the state" so as to be amenable to process and believe that Rem. Rev. Stat. Section 226, *supra*, providing that service may be made "to any agent * * * thereof," is broad enough to include one of the corporation's salesmen, such as Mr. Alley, upon whom service was made herein. A Notice was also forwarded by registered mail as provided by the Act.

[fol. 39] The Washington State Supreme Court in State ex rel. *Columbia Broadcasting Company vs. Superior Court for King County*, 1 Wn. (2nd) 379, in passing on the question of whether service on an agent was good, stated on pages 382-3:

"The question, then, arises whether the Columbia, by reason of its contractual relations with the Queen City, was doing business in this state. The words of the statute, 'any agent,' were intended by the legislature to have a broad meaning, and must be liberally construed to effectuate the legislative intent. While they may not include a day laborer or an employee who has no authority to

represent the corporation in any way other than to discharge his daily task, they must be held to include all agents who represent the corporation in either a general or a limited capacity."

This case is, we also believe, further authority for holding that the petitioner is "doing business in the state." If the Columbia Broadcasting Company was doing business so as to be amenable to process, we believe the petitioner herein would be. Its business has been continuous and in large volume over a number of years and does not consist of a series of isolated transactions and it is, as the court in the above case said:

"—of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is, by its duly authorized officers or agents, present within the state—"

Decision:

The motion of petitioner, International Shoe Company, to quash the service of the Notice of Assessment is hereby denied. The petitioner is a liable employer under the Unemployment Compensation Act and subject to the jurisdiction of the State of Washington and the Office of Unemployment Compensation and Placement for the purpose of assessing contributions. The assessment herein in the amount of $6000.00 is hereby modified; the Commissioner is entitled to have and recover contributions from the petitioner for the period January 1, 1937, through December 31, 1940, in the amount of $3,159.24.

Dated at Olympia, Washington, this 25th day of January, 1943.

J. R. Walsh, Appeal Examiner. P-46

[fol. 40] STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT

NOTICE OF DECISION

Registered Mail
Date January 25, 1943.

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE COMPANY

To: Allen Orton (Stern, Orton & Stern) Attorney.

Interested as: Attorney for petitioner, 1605 Exchange Building, Seattle, Washington.

You will find attached hereto a copy of the decision rendered by the Appeal Tribunal in the above-entitled matter. Section 6 (c) of the Unemployment Compensation Act provides, in part, as follows:

"* * * The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision on the claim, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated. * * *"

Date Jan. 25, '43.

Return to Appeal File
Docket No. A P-46

Form 3811
Nov. 1-4-40

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. Allen Orton
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2. F. G. Sargent
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Date of delivery Jan. 26, '43, 1943

U. S. Government Printing Office 16-12421

A party who deems himself aggrieved by this decision may initiate further appeal by filing a Petition for Review

on or before February 4, 1943, at this office or any office of the United States Employment Service. Form for filing same will be supplied upon request.

Yours very truly, W. G. Preston, Executive Appeal Examiner.

WGP: se
Enc.
CC: Code and File

[fol. 41] STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT

PETITION FOR REVIEW

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE COMPANY

To the Commissioner of Unemployment Compensation and Placement:

The undersigned hereby requests the Commissioner to review the proceedings heretofore had in the above-entitled matter. Decision of the Appeal Tribunal was rendered in the said matter, on the 25th day of January, 1943. This request for review is made for the following reasons: Appeal Examiner, J. R. Walsh, committed error in denying motion of Petitioner to quash service of notice of assessment and in holding Petitioner a liable employer under the Unemployment Compensation Act and subject to the jurisdiction of the State of Washington and the Office of Unemployment Compensation and Placement, for the purpose of assessing contributions, and in deciding that Commissioner is entitled to have and recover contributions in the amount of $3,159.24.

Dated at Seattle, Washington, this 2nd day of February, 1943.

International Shoe Company (Signature of petitioner). Interested as Petitioner, by Stern, Orton & Stern, by Allen Orton, Attorneys for Petitioner, 801 Lowman Building.

Rec'd at L. O. No. Seattle on 2-2-43—By Owen.

Received Feb. 3, 1943. Unemployment Compensation Division, Field Section.

Received Feb. 3, 1943. Office of Unemployment Compensation and Placement, US.

[fol. 42] BEFORE THE COMMISSIONER OF UNEMPLOYMENT COMPENSATION AND PLACEMENT FOR THE STATE OF WASHINGTON

Review No. 378

Docket No. P-46

In the Matter of a Petition for Hearing by INTERNATIONAL SHOE COMPANY

DECISION OF COMMISSIONER

The above employer having petitioned the undersigned Commissioner to review the decision of the Appeal Tribunal entered in this matter on the 25th day of January, 1943, and the undersigned Commissioner having reviewed the proceedings therein and being fully advised in the premises, does hereby adopt the Findings of Fact and Conclusions of Law of the Appeal Tribunal in the above matter, and

It Is Hereby Ordered that the decision of the Appeal Tribunal in the above case dated January 25, 1943, be and the same is hereby affirmed.

Dated at Olympia, Washington, this 11th day of February, 1943.

E. B. Riley, Commissioner of Unemployment Compensation and Placement. (Seal.)

[fol. 43] IN THE SUPERIOR COURT OF KING COUNTY

342190

INTERNATIONAL SHOE COMPANY, a Corporation

vs.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, and E. B. Riley, Commissioner

NOTICE OF APPEAL—Filed March 6, 1943

To: The State of Washington, Office of Unemployment Compensation and Placement; and.

To: E. B. Riley, Commissioner, and

To: The Attorney General of the State of Washington; Attorneys for said Offices:

You, and Each Of You will please take notice that International Shoe Company, a corporation, organized and existing under and by virtue of the laws of the State of Delaware, not engaged in intra-state business within the State of Washington, and without waiving its special appearance and motion to quash as hereinafter referred to, hereby appeals from Notice of Decision rendered on the 25th day of January, 1943, signed by W. G. Preston, Executive Appeal Examiner, and Findings of Fact and Decision of the Appeal Tribunal of the Office of Unemployment and Placement, State of Washington, on the same date by J. R. Walsh, Appeal Examiner, in a matter heard before the Appeal Tribunal, Office of Unemployment Compensation and Placement, State of Washington, entitled: "In the Matter of a Petition for Hearing by International Shoe Company," Docket No. P-46, and from decision of Commissioner E. B. Riley affirming the decision of the Appeal Tribunal, which said decision was dated at Olympia, Washington, on the 11th day of February, 1943, entitled "In the Matter of a Petition for [fol. 44] Hearing by International Shoe Company," Docket No. P-46, Review No. 378, upon the following grounds and for the following reasons:

I

Service of process was ineffectual to confer jurisdiction upon the department of office of Unemployment Placement and special appearance and motion to quash was made in

due time and has been duly preserved at all times during this proceedings by the said department.

II

International Shoe Company is not engaged and has not been engaged as a foreign corporation or otherwise in the transaction of business within the State of Washington, and has not received nor applied for a license to function as a corporation in this State and is not under the jurisdiction of the State of Washington whereby it may be subject either to service of process within the State of Washington or to the taxing powers of the State of Washington.

III

International Shoe Company is not an employer within the intent and spirit of the statutes of the State of Washington.

IV

Appeal Tribunal erred in denying motion of International Shoe Company to quash service of notice of assessment and in holding International Shoe Company liable as an employer under the Unemployment Compensation Act and subject to the jurisdiction of the State of Washington and of the Office of Unemployment Compensation and Placement for the purpose of assessing contributions and in holding International Shoe Company liable to assessments [fol. 45] against said corporation in the sum of $3,159.24, or any other sum.

V

The Commissioner erred in denying petition of the International Shoe Company for review of proceedings of Appeal Tribunal and in affirming the decision of the Appeal Tribunal.

International Shoe Company, Appellant, by Stern, Orton & Stern, Its Attorneys, by Allen Orton.

Office and Post Office Address: 801 Lowman Bldg., Seattle, Washington, Elliott 6396.

[File endorsement omitted.]

[fol. 46] [File endorsement omitted]

IN THE SUPERIOR COURT OF KING COUNTY

No. 342190

INTERNATIONAL SHOE COMPANY, a Corporation, Appellant,

vs.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, and E. B. Riley, Commissioner, Respondent

JUDGMENT—Filed November 10, 1943

The above-entitled cause having come on for hearing before the above-entitled court on the 7th day of October, 1943, for review by said court of the decision of the Commissioner of Unemployment Compensation and Placement entered therein on the 11th day of February, 1943, the appellant, International Shoe Company, appearing and being represented by its attorneys, Stern, Orton & Stern, and the respondent, Commissioner of Unemployment Compensation and Placement, being represented by the Attorney General and George W. Wilkins, Assistant Attorney General, argument having been heard, briefs having been submitted and the court having reviewed the record and on October 22, 1943, having filed its Memorandum Opinion determining that the Office of Unemployment Compensation and Placement and the above-entitled court had jurisdiction over the parties and subject matter involved and that the decision of the Commissioner of Unemployment Compensation and Placement should be upheld and affirmed, and it appearing that due notice has been given of presentment of the within judgment, now, therefore,

It Is Hereby Ordered, Adjudged And Decreed that the [fol. 47] decision of the Commissioner of Unemployment Compensation and Placement heretofore entered in the above-entitled cause on the 11th day of February, 1943, be and the same now hereby is in all respects upheld and affirmed.

Done In Open Court this 10th day of November, 1943.

Hugh Todd, Judge.

Presented by: George W. Williams, Assistant Attorney General, Attorney for Respondent, Commissioner of Unemployment Compensation and Placement.

Due and timely notice of presentment of the within judgment is hereby acknowledged; the within judgment is O. K. as to form; and a copy thereof has been received.

Stern & Stern & Allen Orton, by Allen Orton, Attorneys for Appellant.

[fol. 48] [File endorsement omitted]

IN THE SUPERIOR COURT OF KING COUNTY

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT—Filed November 23, 1943

To: The State of Washington, Office of Unemployment Compensation and Placement: and

To: E. B. Riley, Commissioner, and

To: The Attorney General of the State of Washington: Attorneys for said offices:

You And Each Of You, will please take notice that the International Shoe Company, a corporation, organized and existing under and by virtue of the laws of the State of Delaware, not engaged in business within the State of Washington, and without waiving its Special Appearance and Motion to Quash heretofore filed in this proceeding, and feeling itself aggrieved, does hereby appeal to the Supreme Court of the State of Washington from each and every part of that certain Judgment made and entered herein by the above entitled Court on the 10th day of November 1943, wherein and whereby the decision of the Commissioner of Unemployment Compensation and Placement heretofore entered in the above entitled cause on February 11, 1943, was in all respects upheld and affirmed.

Dated at Seattle, Washington this 23 day of November.

[fol. 49] Stern & Stern and Allen Orton, Attorneys for International Shoe Co., a Corp., 801 Lowman Bldg., Seattle, Wash.

Copy received this 23rd day November 1943. Geo. W. Williams, Asst. Atty. Gen.

[fols. 50-51] Bond on Appeal for $200.00 approved and filed Nov. 24, 1943 omitted in printing.

[fol. 51a] [File endorsement omitted]

[fol 52-1] IN THE SUPREME COURT OF WASHINGTON

No. 29296

INTERNATIONAL SHOE COMPANY, a Corporation, Appellant,

vs.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, and E. B. Riley, Commissioner, Respondent

Appeal from the Judgment of the Superior Court of the State of Washington for King County

Hon. Hugh Todd, Judge

APPELLANT'S OPENING BRIEF—Filed February 24, 1944

Statement of the Case

The proceedings involved in this action were commenced to secure payment of contributions to the Unemployment Compensation Fund of Washington claimed to be due from appellant.

(*Italics occurring in this brief are ours.*)

[fol. 52-2] Appellant is a corporation organized under the laws of Delaware. Its principal place of business is in St. Louis, Missouri. It is engaged in the manufacture and sale of shoes, boots and other footwear. It has no office in the State of Washington. It is not authorized to do business in this State. It has solicitors who take orders in Washington, without authority to accept them. The orders are submitted to the main office, at St. Louis, for its approval. No solicitor has any authority to do anything except forward orders to St. Louis.

The respondent on October 10, 1941, at Seattle, delivered to E. S. Alley, one of the solicitors, a notice of assessment

against the appellant corporation (Commissioner's record, 2). This notice demanded payment by appellant of asserted delinquent contributions and interest to the Unemployment Compensation Fund of this State for the period from January 1, 1937 to December 31, 1940. The assessment was [fol. 52-3] based upon the assertion that these order-takers were employees of appellant in the State of Washington and that appellant was liable for contributions on account of the commissions paid to them. The amount demanded was $6000, an arbitrary figure not based upon any calculations of the commissions paid.

Within the time limited by the practice established by the Unemployment Compensation Act, on October 18, 1941, appellant filed with respondent a special appearance and motion to quash service of the notice and an objection to the jurisdiction of the commission to levy the assessment (Commissioner's record, 3). The motion to quash was upon the grounds that the corporation was not and is not doing business in this State so as to be subject to process, and, moreover, that E. S. Alley was not an agent with sufficient representative capacity to entitle respondent to serve him with process. The jurisdiction of respondent to levy [fol. 52-4] the assessment was controverted upon the ground that it was not an employer and did not furnish employment in the State of Washington within the meaning of the Unemployment Compensation Act.

At the hearing before the appeal tribunal appointed by the commissioner, the cause was submitted upon an agreed statement of facts (Commissioner's record, 7). This agreed statement of facts showed that, if liable at all, appellant was liable for only $3159.24, and not the $6000 arbitrarily assessed. The appeal tribunal on January 25, 1943, denied the motion to quash service of the notice of assessment, overruled the objection to the jurisdiction of respondent to levy the assessment, and held appellant liable for the sum of $3159.24 (Commissioner's record, 8).

Appellant on February 2, 1943, filed with the commissioner a petition for review, and on February 11, 1943, the [fol. 52-5] commissioner affirmed the decision of the appeal tribunal (Commissioner's record, 10, 11).

On March 6, 1943, appellant filed and served its appeal to the Superior Court of the State of Washington for King County (Tr. 1).

Trial before the court resulted in judgment affirming the decisions of the appeal tribunal and the commissioner (Tr. 10) and from that judgment this appeal is prosecuted (Tr. 12, 13).

The agreed statement of facts, omitting the tabulations of the commissions earned by appellant's solicitors, is as follows:

"I

"This stipulation of facts is made for the purpose of presenting to the appeal examiner and such other tribunals as this matter may come before on appeal, or otherwise, questions raised in this proceeding by the special appearance, motion to quash service and objection to the jurisdiction filed in this proceeding by the International Shoe Company and it is specifically understood and agreed that the stipulation of facts [fol. 52-6] shall not constitute a general appearance by the International Shoe Company, but that it, at all times retains such rights as it may have under the special appearance referred to.

"II

"International Shoe Company is a Delaware Corporation. It has its principal place of business in the City of St. Louis, Missouri. Its principal business consists of manufacture and sale of boots, shoes and other footwear. It maintains places of business where manufacturing is carried on and from which its merchandise is sold in the states of Missouri, Arkansas, Illinois, Kentucky, North Carolina, Pennsylvania, New York and New Hampshire. Its merchandise is sold through its several selling divisions or branches, the following branches being the only ones doing any sort of business with residents of the State of Washington:

Roberts, Johnson & Rand
Peters
Friedmann-Shelby
Specialty

"It has not a place of business in the State of Washington; maintains no general agent in the State of Washington. It makes no contracts, either of sale or [fol. 52-7] of purchase in the State of Washington. It maintains no stock of merchandise in the State of

Washington and makes no deliveries of merchandise in intra state commerce in the State of Washington. Attached hereto, marked Exhibit 'A,' referred to and by reference incorporated herein as though full- set forth, is a statement of all traveling salesmen, residing in, and whose principal activities have been within the State of Washington for the years 1937, 1938, 1939 and 1940. Said statement gives the names of each employee, the amount earned by the said employees, a compilation of the potential tax due the State of Washington, if any tax be due, the Social Security numbers of the employees and the amount paid to the Federal Government under Title No. 9, of the Federal Washington Security Act.

"III

"The manner in which the business of International Shoe Company is carried on in the State of Washington, is generally as follows:

"Salesmen are employed from the head office at St. Louis and work under the direct supervision and control of sales managers with offices in St. Louis, and are [fol. 52-8] required as part of their duties to spend certain time each year in St. Louis, Missouri, for the purpose of receiving direct personal instructions as to their duties, as to the line of shoes which they are to offer to the trade, the methods of selling, and to receive information with reference to construction and new types and kinds of shoes which are to be offered to the trade. Said employees or salesmen are given a sample line, which samples uniformly consist of only one shoe of a pair, and no sales are made by salesmen from such samples. They are merely used to display to prospective purchasers. Some of the salesmen rent sample rooms in business buildings and the expenses of such rental and maintenance is paid by the salesmen and they are reimbursed on an expense account by the International Shoe Company. Other salesmen maintain no permanent sample rooms, but rent rooms in hotels or business buildings in the various cities to which they travel.

"IV

"Such transactions as the International Shoe Company has with persons in business, or who reside in

the State of Washington, involving the sale and distribution of its merchandise to merchants in the State of [fol. 52-9] Washington and are conducted as follows:

"Each salesman is given a designated territory in which to solicit orders. The authority of the salesman is limited to exhibiting samples of the merchandise for which they solicit orders to merchants who are probable buyers thereof; endeavor to procure orders on prices and terms fixed by the International Shoe Company. If order(s) are obtained, to transmit them to the office of the International Shoe Company outside the State of Washington for acceptance or rejection, and if orders are accepted by the International Shoe Company the merchandise called for by such orders is shipped F. O. B., shipping point, from outside of the State of Washington. Practically all merchandise shipped by International Shoe Company into the State of Washington is on orders approved in St. Louis, Missouri, and shipped therefrom. The merchandise, which is shipped into Washington is invoiced at the point of shipment and invoices are payable at point of shipment from which point collections are made. No salesman has power or authority to bind the International Shoe Company to any contract or to finally conclude any transactions in its behalf, the salesman's [fol. 52-10] duties and authority being limited strictly to the solicitation of orders.

"The salesmen are under the direct control and direction of the International Shoe Company and are not permitted to be engaged in an independently established trade, occupation, profession or business of the same nature involved in their employment by the International Shoe Company.

"V

"On October 10, 1941, a copy of Notice of Assessment by the Commissioner of Unemployment Compensation and Placement, was delivered to an(d) left with one E. S. ALLEY, a salesman of the International Shoe Company, at Seattle, Washington, demanding payment of delinquent contributions or interest, in the sum of $6000. Said sum was not arrived at by calculation of the wages earned by salesmen of the International Shoe Company within the State of Washing-

ton, but was an arbitrary figure set by the Commissioner. E. S. Alley is a salesman of the International Shoe Company, employed upon the terms and under the authority and for the purpose as hereinabove referred to for employees of International Shoe Company within the State of Washington. A copy of the [fol. 52-11] same notice of assessment was also placed in the United States mails, postage fully prepaid, addressed to International Shoe Company at St. Louis, Missouri, on the 10th day of October, 1941. Thereafter, and on the 18th day of October, 1941, International Shoe Company filed with the Department of Unemployment Compensation and Placement, its special appearance, motion to quash service and objection to jurisdiction." (Commissioner's record, part 7.)

Assignments of Error

1. The court erred in finding that appellant was doing business in Washington so as to be subject to process.

2. The court erred in finding that E. S. Alley had sufficient capacity to represent appellant so that service of process could be made upon him for it.

3. The court erred in finding that the Unemployment Commissioner had jurisdiction to levy an assessment [fol. 52-12] against appellant for contribution to the unemployment compensation fund.

4. The court erred in entering judgment against appellant.

Argument for Appellant

Appellant Was Not Doing Business in the State of Washington

Assignment No. 1

Sec. 14(c) of the Unemployment Compensation Act, Rem. Rev. Stat. §9998-114c, provides that service of notice of delinquent assessment shall be served upon the delinquent employer in the manner prescribed for the service of summons in civil actions. Rem. Rev. Stat. §226 (P. C. §8438) provides:

"The summons shall be served by delivering a copy thereof as follows: * * * (9) If the suit be against

a foreign corporation * * * doing business within this state to any agent, cashier or secretary thereof; * * *"

It is well settled that to be doing business within the [fol. 52-13] meaning of this section it is necessary that a foreign corporation be doing business of such nature as to manifest its presence in this State. It is not sufficient that it merely carried on its interstate activities here. All that the record in this case—the agreed statement of facts—shows is that appellant sent its solicitors to this State, to take orders. Everything done was incidental to that work. These order-takers do not transact any business. The taking of orders for submission to the home office of the company for its approval is not doing business. This is settled by decisions of this court as well as by the Supreme Court of the United States. The order-takers do not even consummate the sale—the sales are not made in the State of Washington; they are made in St. Louis.

Appellant has no place of business in this state. It maintains no general agent here. It makes no contracts either [fol. 52-14] of sale or purchase in Washington. It maintains no stock of merchandise here. It makes no deliveries in intrastate commerce in this state (Agreed statement of facts page 2).

The solicitors of orders in this state are employed at the head office of appellant in St. Louis, Missouri. They work under the direct supervision of sales managers in St. Louis (Agreed statement, 2). They are under the direct control and direction of appellant (Agreed statement, 3). They are required as a part of their duties to spend a certain time each year in St. Louis to receive direct personal instructions as to their duties to learn of shoes they will be permitted to offer for sale, to learn the methods of sale and the conditions of sale, and to receive information as to the construction and the new types and kinds of shoes which are to be offered by them (Agreed statement, 2).

Their authority is limited to exhibiting samples of mer- [fol. 52-15] chandise for which they solicit orders; these samples consist of one shoe of a pair; no sales are made from the samples. The solicitors endeavor to procure orders upon prices and terms fixed by appellant. If orders are obtained, the solicitors forward them to the offices of

appellant outside Washington for acceptance or rejection (Agreed statement, 3).

No solicitor has power or authority to bind appellant to any contract or finally to conclude any transactions in appellant's behalf. The solicitors' duties and authority are limited strictly to the solicitation of orders (Agreed statement, 3).

If any orders obtained by the solicitors are acceptable to appellant, then the orders are filled by merchandise shipped from outside this state. This merchandise is shipped F. O. B. shipping point. All of the shipments coming into this state originate outside the state and almost all of them originate at St. Louis, after being approved and accepted there [fol. 52-16] (Agreed statement, 3). (Appellant has places of manufacture in several states, Agreed Statement, 1.)

All of the goods coming into Washington are invoiced at the point of shipment. All invoices are payable at the place of shipment. All collections are made at the point of shipment (Agreed statement, 3).

Some of the solicitors rent sample rooms in business buildings and the cost of these is paid by the solicitors, they being reimbursed on expense accounts by appellant. Other solicitors maintain no permanent sample rooms but rent rooms in hotels or business buildings in various cities to which they travel (Agreed Statement, 2 and 3).

> "The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within [fol. 52-17] the State or district where service is attempted."
>
> *People's Tobacco Co. v. Amer. Tobacco Co.*, 246 U. S. 79, 38 S. Ct. 233, 62 L. ed. 587, Ann. Cas. 1918C, 537.

In the case of *State ex rel. Paraffine Companies, Inc. v. Superior Court*, 184 Wash. 69, 49 P. (2d) 929, was involved the question of whether or not the Paraffine Companies were transacting business in Thurston County. The Companies' principal place of business was in King County. It sent salesmen throughout the state to call upon prospective purchasers and receive orders to be transmitted to Seattle.

If the orders were approved by the credit department the sales were made in the Seattle office. The salesmen had no authority to bind the Companies to sales, and all orders received were subject to approval. Deliveries were made either from the Seattle warehouse or the Companies' factory in California. The Companies sold their product to three merchants in Olympia. Two of these merchants were [fol. 52-18] solely retail dealers. One of them, the Washington Veneer Company, was supplying other dealers. The representatives of the Companies went with representatives of the Veneer Company to visit various dealers in Thurston County. These dealers were told that the products of the Paraffine Companies would be handled by the Veneer Company and would supply these dealers. The Veneer Company supplied the dealers, in accordance with those statements. The Veneer Company ordered goods through salesmen of the Paraffine Companies or by mail, and made payments every thirty days or less. In holding that the Companies were not transacting business in Thurston County the court said:

> "While the veneer company is referred to as a distributor, it purchases from the Paraffine Companies at a discount, in the course of trade, and resells to its own customers at a profit. The other two concerns purchase, in ordinary course, the products that are needed to supply their immediate customers. While [fol. 52-19] the Paraffine Companies' salesmen stimulate trade and solicit the use of its products, purchases are made by the Olympia dealers at the Seattle office.
>
> "We are clear that the Paraffine Companies is not transacting business within Thurston County, as the term has been defined by this court."

The case of *Bank of America v. Whitney Central National Bank*, 261 U. S. 171, 43 S. Ct. 311, 67 L. ed. 594, involved a suit against a Louisiana corporation in the federal court in New York. The Whitney Central National Bank was a Louisiana corporation and had its usual place of business at New Orleans. It was claimed that the following established the fact that the Whitney Central National Bank was doing business in New York so as to subject it to process in New York: It had six correspondent banks in New

York. In each of them it carried continuously an active regular deposit account. In addition these correspondent banks conducted other transactions for the Whitney Central [fol. 52-20] National Bank. These included the following: There was paid in New York, through the correspondent banks, drafts drawn by the Whitney Central National Bank against letters of credit issued by it at New Orleans. The correspondent banks received in New York, from brokers and others, securities in which the Whitney Central National Bank or its depositors were interested, and delivered these securities. The correspondent banks made payment to persons in New York for such securities. The correspondent banks held such securities on deposit in New York for long periods and arranged a substitution of securities. The correspondent banks under specific instructions from the Whitney Central National Bank cashed checks drawn upon the latter bank by third parties with whom it had no banking or deposit relations. The correspondent banks received in New York, from third persons with whom the Whitney Central National Bank had no banking relations, [fol. 52-21] deposits of money for the account of customers of the Whitney Central National Bank.

The United States Supreme Court stated that these additional transactions involved the relationship of principal and agent. The court said, referring to these transactions:

> "Superimposed upon the simple relation of bank and depositors are numerous other transactions which necessarily involve also the relationship of principal and agent."

Notwithstanding this declaration, the Supreme Court held that the Whitney Central National Bank was not doing business in New York of a character to render it present in that State subject to the service of process. The court said:

> "The Whitney Central had what would popularly be called a large New York business. The transactions were varied, important and extensive. But it had no place of business in New York. None of its officers or employees was resident there. Nor was this New York [fol. 52-22] business attended to by any one of its officers or employees resident elsewhere. Its regular New York business was transacted for it by its corre-

spondents—the six independent New York banks. They, not the Whitney Central, were doing its business in New York. In this respect their relationship is comparable to that of a factor acting for an absent principal. The jurisdiction taken of foreign corporations, in the absence of statutory requirement or express consent, does not rest upon a fiction of constructive presence, like *qui facit per alium facit per se*. It flows from the fact that the corporation itself does business in the State or district in such a manner and to such an extent that its actual presence there is established. That the defendant was not in New York and, hence, was not found within the district is clear."

Bank of America v. Whitney Central National Bank, 261 U. S. 171, 43 S. Ct. 311, 67 L. ed. 594.

[fol. 52-23] E. S. Alley Was Not an Agent Qualified to Receive Process

Assignment No. 2

E. S. Alley is a solicitor for the International Shoe Company. His authority is limited to exhibiting samples, endeavoring to procure orders, transmitting the orders to the office of the International Shoe Company outside of the State of Washington, for acceptance or rejection. His duties and authority are limited strictly to the solicitation of orders.

When Mr. Alley has received an order and transmitted it to St. Louis or some other office of appellant—outside of the state of Washington—his duties are at an end. He has exhausted whatever authority he possessed. He has nothing to do with the shipment of the order. He has nothing to do with the delivery of the goods in Washington. He has nothing to do with the collections. Except for the ability to display samples, he has done nothing, when he takes [fol. 52-24] and forwards the order, which some stranger could not have done. Any one, not even connected with appellant could submit to the home office of appellant orders for its approval or rejection.

It is impossible to conceive how Mr. Alley could have less authority over the business affairs of appellant.

Even though by strained reasoning it could be held that appellant was doing business in this state it could not be so held simply by a consideration of the work which Mr.

Alley does. All that he does is simply incidental to the carrying out of his work of receiving and forwarding orders.

> "The person upon whom the service is made must be an agent who represents, and derives his authority from, the corporation defendant, and the authority thus conferred and exercised must be an actual authority, and not one created by implication."
>
> [fol. 52-25] *Arrow Lumber etc. Co. v. Union Pac. R. Co.*, 53 Wash. 629 at 631, 102 Pac. 650.

> "The so-called agent is nothing more than a mere advertiser, whose duty it is to explain to intending travelers and shippers of freight the advantages of traveling or shipping over the respondent's lines. He possessed no power to sell tickets, make freight rates, or otherwise obligate the company in any form of contract, and it is difficult to understand what legal obligation he could create on its behalf."
>
> *Rich v. Chicago B. & Q. R. Co.*, 34 Wash. 14 at 17, 74 Pac. 1008.

The International Shoe Company Was Not Subject to the Taxing Power of the State

Assignment No. 3

It is evident from what has been said and from the record that all that appellant conducts in the State of Washington is interstate commerce. Its solicitors are employed at St. Louis, Missouri. The employment contracts are made in St. Louis. The employees are subject to direction from St. [fol. 52-26] Louis. Any tax upon the right of appellant to employ its solicitors would be a tax and a burden upon employment which is interstate commerce. The power to tax is the power to destroy. If this State possesses the power to tax, if the commissioner has jurisdiction to levy the tax assessed in these proceedings, then this State has the power to destroy the right of appellant to have any employees in this State at all.

Article I, Section 8, of the Constitution of the United States provides:

> "The Congress shall have power * * * to regulate commerce * * * among the several states."

The Fifth Amendment:

> "No person shall * * * be deprived of * * * property without due process of law."

The Fourteenth Amendment:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the [fol. 52-27] United States; nor shall any state deprive any person of life, liberty, or property, without due process of law * * *."

> "The power of taxation, however vast in its extent, is necessarily limited to subjects *within* the jurisdiction of the state. These subject- are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects."

> *Cleveland P. & A. R. R. Co. v. Commonwealth of Pennsylvania,* 15 Wall. 300, 21 L. ed. 179.

In the case of *Puget Sound Stevedoring Co. v. Tax Commission of Washington,* 302 U. S. 90, 82 L. ed. 68, there was under consideration the right of this State to collect the use and occupation tax from the business of stevedoring. The contention of the stevedoring company, that in loading and unloading vessels engaged in hauling interstate shipments the workmen and the company were engaging in interstate commerce and therefore the State was without [fol. 52-28] jurisdiction to levy the tax, was upheld. The court said:

> "No one would deny that a crew would be engaged in interstate or foreign commerce if busied in loading or unloading an interstate or foreign vessel (Citations omitted). A longshoreman busied in the same task bears the same relation as the crew to the commerce he serves. * * *

> "The business of loading and unloading being interstate or foreign commerce, the State of Washington is not at liberty to tax the privilege of doing it by exacting in return therefor a percentage of gross receipts. Decisions to that effect are many and controlling."

> *Puget Sound Stevedoring Company v. Tax Commission of the State of Washington,* 302 U. S. 90, 82 L. ed. 68.

In *Cheney Bros. Co. v. Massachusetts*, 246 U. S. 147, 62 L. ed. 632, at page 636, where Massachusetts was attempting to collect an excise tax from Cheney Bros. Co., the court stated the facts of the case and the law pertaining thereto, in the following language:

> "This is a Connecticut corporation whose general [fol. 52-29] business is manufacturing and selling silk fabrics. It maintains in Boston a selling office with one office salesman and four other salesmen who travel through New England. The salesmen solicit and take orders, subject to approval by the home office in Connecticut, and it ships directly to the purchasers. No stock of goods is kept in the Boston office, but only samples used in soliciting and taking orders. Copies and records of orders are retained, but no bookkeeping is done, and the office makes no collections. The salesmen and the office rent are paid directly from Connecticut, and the other expenses of the office are paid from a small deposit kept in Boston for the purpose. No other business is done in the state.
>
> "We do not perceive anything in this that can be regarded as a local business as distinguished from interstate commerce. The maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate business and have no other purpose. *Like the employment of the salesmen, they are among the means by which that business is carried on and share its immunity from state taxation.* (Citations omitted). Nor is the situation changed by inferring, as the state court did, that [fol. 52-30] orders from customers in Connecticut sometimes are taken by salesmen connected with the Boston office, and, after transmission to and approval by the home office, are filled by shipments from the company's mill in Connecticut to such customers. In such cases it doubtless is true that the resulting sale is local to Connecticut, *but the action of the Boston office in receiving the order and transmitting it to the home office partakes more of the nature of interstate intercourse than of business local to Massachusetts, and affords no basis for an excise tax in that state.* *International Textbook Co. v. Pigg*, 217 U. S. 91, 106, 107, 54 L. ed. 678, 685, 27 L. R. A. (N.S.) 493, 30 Sup. Ct. Rep. 481,

18 Ann. Cas. 1103. *We think the tax on this company was essentially a tax on doing an interstate business, and therefore repugnant to the commerce clause.*" (Italics supplied.)

Cheney Bros. Co. v. Massachusetts, 246 U. S. 147, 62 L. ed. 632.

In the case of *Real Silk Hosiery Mills v. Portland*, 268 U. S. 325, 69 L. ed. 982, was involved the right of Portland, Oregon, to collect a license fee from the hosiery company. [fol. 52-31] Its solicitors went from house to house soliciting orders and accepting them. They also collected a deposit of $1 on each sale, which was the solicitor's compensation. In holding that the enforcement of this ordinance should be enjoined, the Supreme Court said:

"Considering former opinions of this court we cannot doubt that the ordinance materially burdens interstate commerce and conflicts with the commerce clause (Citing cases). The negotiation of sales of goods which are in another state, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce. Manifestly, no license fee could have been required of appellant's solicitors if they had traveled at its expense and received their compensation by direct remittances from it. And we are unable to see that the burden of interstate commerce is different or less because they are paid through retention of advance partial payments made under definite contracts negotiated by them."

Real Silk Hosiery Mills v. Portland, 268 U. S. 325, 69 L. ed. 982.

[fol. 52-32] In the case of

Matson Navigation Co. v. State Board of Equalization of California, 297 U. S. 441, 80 L. ed. 791.

was involved the right of California to levy a tax on corporations for the privilege of exercising their corporate franchises within that State. The Supreme Court said, at page 446:

"A foreign corporation whose sole business in California is interstate and foreign commerce cannot be subjected to the tax in question."

In the case of *Paramount Pictures Distributing Co. v. Henneford*, 184 Wash. 376, 51 P. (2d) 385, the plaintiffs had brought suit to recover the occupation tax which they had paid and to restrain the State Tax Commission from collecting future taxes. The plaintiffs were all foreign corporations manufacturing motion pictures. Each had a branch office in Seattle, in charge of a manager. The manager solicited applications for leases of picture films, sub- [fol. 52-33] ject to approval by the home office of the plaintiffs. The court held that the transactions of the plaintiffs were in interstate commerce and that the State was without power to levy the tax against them.

Attorneys' Fees

Sec. 6 of the Unemployment Compensation Act. Rem. Rev. Stat. §9998-106i, provides that no attorney fees shall be charged or received for any appeal to the courts from a decision involving the *right of an employee* to receive benefits under the act, except upon approval of the court.

Sec. 14 (c) of the act, Rem. Rev. Stat. §9998-114e, provides that upon appeal by an employer from a notice of *delinquent assessment* the same procedure shall be followed as in appeals from decisions as to the rights of employees.

It is believed that the limitations as to attorney fees prescribed with reference to appeals relating to employees' [fol. 52-34] *rights* do not apply to an appeal from a notice of *delinquent assessment*. One reason for this is that there is no provision that attorney fees on appeal from *delinquent assessment* shall be assessed against the compensation fund, as in the case in appeals from decisions involving *employees' rights*. However, out of an abundance of caution, if the court disagrees with this conclusion, it is requested that this court fix appellant's attorney fees in this court under such procedure as the court may direct.

Conclusion

It is submitted that under the facts disclosed by the record here it cannot be held that appellant is doing business in this State so as to subject it to process.

It is also clear that even though appellant could be deemed to be doing business in this State, E. S. Alley is not an [fol. 52-35] agent with sufficient representative capacity to authorize service of process to be made upon him on behalf of appellant.

Also, there is no jurisdiction on the part of the Commissioner of Unemployment Compensation to levy the tax here involved upon appellant. To permit such a tax is violative of all the provisions of the United States Constitution above referred to.

Respectfully submitted, Stern & Stern and Allen Orton and T. M. Royce, Attorneys for Appellant.

[fol. 52-36] *Due and timely service of the within brief, by the receipt of three copies thereof, is hereby admitted this 23 day of* February, 1944.

Smith Troy, Attorney General; George W. Wilkins, Ass't Att'y Gen., Attorneys for Respondents.

[fol. 53] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 29296. En Banc

INTERNATIONAL SHOE COMPANY, a Corporation, Appellant,

v.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT, and E. B. Riley, Commissioner, Respondent

OPINION—Filed January 4th, 1945

The proceedings involved in this action were commenced by the department of unemployment compensation and placement, hereinafter referred to as the department, to recover contributions claimed to be due from International Shoe Company, hereinafter referred to as appellant, for the period of January 1, 1937, through December 31, 1941. No contention is made by appellant that the amount of the contributions found to be due by the commissioner of unemployment compensation and placement and the superior court of King county was not correct, if appellant is liable for any contributions.

Notice of assessment was personally served upon Edward S. Alley, a salesman employed by appellant, in King county, Washington, on October 10, 1941. On October 18th appellant appeared specially before the department, and moved to quash the service upon Mr. Alley upon the following grounds: (1) That service of the notice of assessment upon Mr. Alley was not good service on appellant. (2) That appellant is a corporation, organized and existing under and by virtue of the laws of Delaware, and is not engaged in doing business within the state of Washington; that it has no agent or other person within this state upon whom service of process may be made; that it is doing only inter- [fol. 54] state business. (3) That appellant is not an employer, and does not furnish employment within the state of Washington, within the meaning of those terms, as defined by the unemployment compensation act.

Appellant requested a hearing, and pursuant to such request the matter came on for hearing before the appeal tribunal upon stipulated facts, supplemented by the testimony of Edward Alley. On January 25, 1943, the appeal tribunal rendered its decision, wherein it denied appellant's motion to quash and held the commissioner was authorized to recover from appellant for the period above mentioned contributions in the sum of $3,159.24.

A petition was duly filed with the commissioner to review the decision of the appeal tribunal. The commissioner thereafter reviewed such decision, and on February 11, 1943, entered an order confirming the decision of the appeal tribunal.

An appeal was taken from the decision of the commissioner to the superior court for King county, which thereafter, on November 10, 1943, entered judgment affirming the decision of the commissioner. This appeal is from the judgment entered by the superior court, and as a basis for such appeal appellant assigns error upon the finding of the trial court that appellant was doing business in Washington so as to be subject to process; upon the finding that Edward S. Alley had sufficient capacity to represent appellant so that service of process could be made upon him; upon the finding that the commissioner had jurisdiction to levy an assessment for contributions to the unemployment compensation fund; and upon the entry of judgment against appellant.

While we do not believe the testimony of Mr. Alley adds anything to the stipulated facts, we mention his testimony because the record shows the facts to be considered were those stipulated, plus the testimony of Mr. Alley.

The pertinent facts may be stated as follows: Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri. Its principal business consists of the manufacture and sale of boots, shoes and other [fol. 55] footwear. It maintain places of business where manufacturing is carried on, and from which its merchandise is sold in the states of Missouri, Arkansas, Illinois, Kentucky, North Carolina, Pennsylvania, New York and New Hampshire. Its merchandise is sold in Washington through its several selling divisions or branches, the following branches being the only ones doing any sort of business with residents of the state of Washington: Roberts, Johnson & Rand, Peters, Friedman-Shelby and Specialty. So far as appears from the record, these branches seem to be no more than designated sales units to handle appellant's products.

Appellant has no place of business in this state. It makes no contracts, either for sale or purchase in this state. It maintains no stock of merchandise in this state, and makes no deliveries of merchandise in intrastate commerce in this state.

In its business in the state of Washington for four years, 1937 through 1940, appellant employed from eleven to thirteen salesmen, all of whom resided in the state, and whose principal activity was the solicitation of orders for appellant's merchandise to be delivered in this state. Commissions paid to these salesmen for the four years indicate the volume and extent of business carried on by the salesmen for appellant. It is evident that this business did not consist of isolated transactions, but was a continuous course of business, the total commissions paid for 1937 being $36,098.19, for 1938, $32,075.63, for 1939, $33,846.44, and for 1940, $31,879.19, or a total for commissions for the four year period, $133,899.45.

These salesmen are under the direct supervision and control of sales managers, the latter being located in St. Louis. Each salesman has a designated territory within the state. Salesmen have a sample line consisting of one shoe of a pair. These samples belong to appellant, and are given to the salesmen to display to prospective purchasers. Some

of the salesmen rent sample rooms in business buildings, and some maintain no permanent sample rooms, but rent [fol. 56] rooms in hotels or business buildings in the various cities in their territory. The expense of such rental is paid by the salesmen, and they are later reimbursed by appellant. The authority of the salesmen is limited to exhibiting to merchants who are probable buyers samples of merchandise for which they solicit orders, endeavoring to procure orders on prices and terms fixed by appellant. If orders are obtained, the salesmen transmit them to appellant's office in St. Louis, for acceptance or rejection. If the orders are accepted by appellant, the merchandise called for by such orders is shipped f. o. b. shipping point, from outside the state of Washington. No salesman has authority to bind appellant with any contract, or to finally conclude any transaction in its behalf, nor can he make collections. Salesmen are not permitted to engage in an independently established trade, occupation, profession, or business of the same nature as is involved in their employment by appellant.

The only thing which it can be said Mr. Alley's testimony added to the stipulated facts may be gathered from his somewhat detailed account of the conventions held each year at St. Louis, which the salesmen are required to attend, their expenses being paid by appellant. From this testimony it appears that a regular program is followed by appellant through this contact with its salesmen, to keep the company's business at a high level, to eliminate, so far as possible, difficulties arising in the particular territories, and to discuss the credit of Washington purchasers and customers with whom appellant is doing business. The company's business in this state is apparently discussed in great detail, and the salesmen are instructed as to the line of shoes they are to offer to the trade, the method of selling, and conditions of selling. They also receive information with reference to construction and new types and kinds of shoes which are to be offered to the trade.

[fol. 57] Rem. Supp. 1941, § 9998-114c, provides:

"At any time after the commissioner shall find that any contribution or the interest thereon have become delinquent, the commissioner may issue a notice of assessment specifying the amount due, which notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of summons in a civil action, except

that if the employer cannot be found within the state, said notice will be deemed served when mailed to the delinquent employer at his last known address by registered mail."

Rem. Rev. Stat., § 226, provides the manner of service of summons in civil actions. Subdivision 9 of § 226 provides that if the suit be against a foreign corporation doing business within this state, the summons shall be served by delivery of a copy thereof to *any agent*, cashier or secretary thereof.

In the instant case, both methods of service provided for by § 9998-114c, *supra*, were followed.

The principal question with which we are here concerned is whether or not appellant was doing business in the state of Washington so as to make it amenable to process of the courts of this state.

Before discussing some of the authorities dealing with the question last above stated, we desire to call attention to the fact that we shall first consider the specific question of whether or not appellant is so doing business within this state as to make it amenable to process by the courts of this state, and not whether it is so doing business as to require it, in certain instances, to pay the annual license fee required by our statutes, as was the case in Smith & Co. v. Dickinson, 81 Wash. 465, 142 Pac. 1133. It is true that in the cited case the court does not point out the distinction above made, but the facts upon which the opinion is based and the statutes cited clearly show that the court was there considering the question of whether or not Smith & Co., a foreign corporation, was so doing business within this state as to require it to plead and prove that it had paid the annual license fee required by the statute before it could bring an action in this state.

[fol. 58] We are of the opinion the Dickinson case, *supra*, is not contrary to the conclusion we have reached, on the question here presented, nor have we been cited to any case decided by this court which, in our opinion, is contrary to such conclusion, when the distinction above pointed out is kept in mind, a distinction which is clearly made in the leading and often cited case of Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915, to which further reference will be made.

We have in several cases, stated that the mere bringing of an action in this state by a foreign corporation, does not

constitute doing business in this state, so as to require such corporation to pay an annual license fee. Lilly-Brackett Co. v. Sonnemann, 50 Wash. 487, 97 Pac. 505; Smith & Co. v. Dickinson, 81 Wash. 465, 142 Pac. 1133; Alaska Pac. Nav. Co. v. Southwark Foundry & Machine Co., 104 Wash. 346, 176 Pac. 357; Singmaster v. Hall, 98 Wash. 134, 167 Pac. 136; St. Anthony & Dakota Elevator Co. v. Turner, 132 Wash. 419, 232 Pac. 288; Proctor & Gamble Co. v. King County, 9 Wn. (2d) 655, 115 P. (2d) 962. In the case last cited we stated:

"We have consistently held that statutes providing that no corporation shall commence any action in this state without alleging and proving that it has paid its annual license fee, refer only to corporations doing business within this state, and do not apply to a non-resident corporation simply bringing an action in this state, as that does not constitute doing business within this state. Lilly-Brackett Co. v. Sonnemann, 50 Wash. 487, 97 Pac. 505; Smith & Co. v. Dickinson, 81 Wash., 465, 142 Pac. 1133."

The above cited cases are not in point from a factual standpoint, nor are they in point when the question to be considered is whether or not the foreign corporation was doing business in this state so as to be amenable to process. [fol. 59] Later in this opinion we shall deal with the question of whether or not the exaction of the payment required under the unemployment compensation act is an unlawful burden upon interstate commerce.

We here also desire to emphasize that in reaching the conclusion drawn on this first question, we have not alone considered the volume of business transacted, but we have considered all the facts stipulated.

We desire first to call attention to an article in volume 35 of Michigan Law Review, under the general heading "Comments," on page 969. This article states the early theory as expressed by Justice Taney "that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created," and some of the reasons why the several states have passed statutes providing for service of process upon foreign corporations which are "doing business" within the state. The article further states:

"The factor of 'doing business' within a state was not recognized as establishing a new basis for jurisdiction but

was explained upon the theory of consent. The reasoning was that since the state had the power to refuse admission of foreign corporations which were not agents of the Federal government or corporations engaged in interstate commerce, the state could as an implied condition to the corporation's entering the state make a foreign corporation amenable to process there. The corporation's consent to the statutory condition was implied upon its entering the state. Later another theory, called the 'actual presence' theory, was developed. Under this theory it was said that if a corporation was 'doing business' in a state it must be present in that state. The use of these two fictional theories, which extended the law of natural persons to make it adaptable to corporations, is largely responsible for the confusion occurring in this field."

[fol. 60] The article further refers to and discusses three leading cases on this question, namely, Green v. Chicago, B. & Q. Ry. Co., 205 U. S. 530, which holds that the corporation was not "doing business" in Pennsylvania, and International Harvester Co. v. Kentucky, 234 U. S. 579, and Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915, which hold that the respective corporations were doing business in the state where process was served.

Typical of the early cases based upon the consent theory is Lafayette Ins. Co. v. French, 59 U. S. 404.

The corporate presence theory was apparently formulated by Mr. Justice Brandeis in the case of Philadelphia & Reading Co. v. McKibbin, 243 U. S. 264, in these words:

"A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is *present there*." (Italics ours.)

In People's Tobacco Co. v. American Tobacco Co., 246 U. S. 79, the following general rule was announced:

"The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted."

In State ex rel. Columbia Broadcasting Co. v. Superior Court, 1 Wn. (2d) 379, 96 P. (2d) 248, we cited with approval the general rule as above stated, but in view of what was stated in this same case in 5 Wn. (2d) 711, 105 P. (2d) 70, the decision in 1 Wn. (2d) cannot be considered as authority, other than as it expresses the opinion of the judges who signed that opinion.

The leading case on the question of what constitutes doing business within a state by a foreign corporation so as to justify the courts of that state in taking jurisdiction of complaints against it, is International Harvester Co. v. Kentucky, 234 U. S. 579, hereinbefore referred to. The case [fol. 61] presented the question of the sufficiency of the service of process on an alleged agent of the Harvester Co. in a criminal proceeding in a county court of Kentucky in which an indictment had been returned against the Harvester Co. for an alleged violation of the anti-trust laws of Kentucky. It is conceded in the cited case that whether the person upon whom process was served was one designated by the law of Kentucky as an agent to receive summons on behalf of the company was a question within the province of the court of appeals of Kentucky to finally determine. The court stated the first question to be determined was whether, under the circumstances shown in that case, the Harvester Co. was carrying on business in Kentucky in such a manner as to justify the courts of that state in taking jurisdiction of complaints against it. The opinion states:

"For some purposes a corporation is deemed to be a resident of the state of its creation, but when a corporation of one state goes into another in order to be regarded as within the latter it must be there by its agents authorized to transact its business in that state. The mere presence of an agent upon personal affairs does not carry the corporation into the foreign state. It has been frequently held by this court, and it can no longer be doubted that it is essential to the rendition of a personal judgment that the corporation be 'doing business' within the state . . . Each case must depend upon its own facts, and their consideration must show that this essential requirement of jurisdiction has been complied with and that the corporation is actually doing business within the state."

The facts upon which the court determined that the corporation was doing business in Kentucky were as follows:

"'Travelers negotiating sales must not hereafter have any headquarters or place of business in that state, but may reside there.

"'Their authority must be limited to taking orders, and all orders must be taken subject to the approval of the general agent outside of the state, and all goods must be shipped from outside of the state after the orders have been approved. Travelers do not have authority to make a contract of any kind in the state of Kentucky. They merely take orders to be submitted to the general agent. If any one in Kentucky owes the company a debt, *they may receive the money, or a check, or a draft for the same* but they do not have any authority to make any allowance or compromise any disputed claims. * * * All contracts of sale must be made f. o. b. from some point outside of Kentucky and the goods become the property of the purchaser when they are delivered to the carrier outside of the state. Notes for the purchase price may be taken and they may be made payable at any bank in Kentucky. All contracts of any and every kind made with the people of Kentucky must be made outside of that state, and they will be contracts governed by the laws of the various states in which we have general agencies handling interstate business with the people of Kentucky.'" (Italics ours.)

The opinion states:

[fol. 62] "Upon this question the case is a close one, but upon the whole we agree with the conclusion reached by the court of appeals, that the Harvester Company was engaged in carrying on business in Kentucky. We place no stress upon the fact that the Harvester Company had previously been engaged in doing business in Kentucky and had withdrawn from that state for reasons of its own. * * * *Here was a continuous course of business in the solicitation of orders which were sent to another state and in response to which the machines of the Harvester Company were delivered within the state of Kentucky. This was a course of business, not a single transaction.* The agents not only solicited such orders in Kentucky, but might there receive payment in money, checks or drafts. They might take

notes of customers, which notes were made payable, and doubtless were collected, at any bank in Kentucky. This course of conduct of authorized agents within the state in our judgment constituted a doing of business there in such wise that the Harvester Company might be fairly said to have been there, doing business, and amenable to the process of the courts of the state." (Italics ours.)

We call attention at this point to the fact that while in the cited case the court stated the agents might receive payment in money, checks or drafts, and might take notes of customers, payable at Kentucky banks, the court did not emphasize these latter facts in holding that the company was carrying on a *continuous course of business.*

The cited case distinguishes the case of Green v. Chicago B. & Q. Ry. Co., 205 U. S. 530, often cited to sustain the contention that a foreign corporation is not doing business within a state where it appears that in substance such business consisted of nothing more than the solicitation of orders.

Some three years after the decision in the International Harvester Co. case, *supra*, Mr. Justice Day, who wrote the opinion in that case, wrote the opinion in the case of People's Tobacco Co. v. American Tobacco Co., 246 U. S. 79, *supra*. While we are of the opinion, from an examination of the cited case, that the decision might well have been sustained upon the theory that the authority of Irby, the agent of American Tobacco Co. upon whom service was attempted to be made, had been revoked prior to the time of such attempted service, yet the court, as disclosed by the opinion, did state that the American Tobacco Co. was selling goods in Louisiana to jobbers, and sending its drummers into that state to solicit orders from the retail trade, [fol. 63] to be turned over to the jobbers, the charges being made by the jobbers to the retailers. These agents were not domiciled in the state, and did not have the right or authority to make sales on account of the defendant company, collect money or extend credit for it. The court, after the statement hereinabove referred to relative to the attempted service on an unauthorized agent, further states:

"Upon the broader question, we agree with the district court that the American Tobacco Company at the time of the attempted service was not doing business within the

state of Louisiana. The question as to what constitutes the doing of business in such wise as to make the corporation subject to service of process has been frequently discussed in the opinions of this court, and we shall enter upon no amplification of what has been said. Each case depends upon its own facts. The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted. * * *

"As to the continued practice of advertising its wares in Louisiana, and sending its soliciting agents into that state, as above detailed, the agents having no authority beyond solicitation, we think the previous decisions of this court have settled the law to be that such practices did not amount to that doing of business which subjects the corporation to the local jurisdiction for the purpose of service of process upon it."

The court, after referring to the International Harvester case, *supra*, held that the district court properly concluded that the attempted service on Irby should be quashed.

From the cited cases we reach the conclusion that while mere solicitation of business within a state by the agents of a foreign corporation does not constitute doing business so as to make the corporation amenable to process by the courts of that state, solicitation, together with certain other acts, will be sufficient to render the corporation subject to process. So our inquiry now is: What additional acts will be deemed sufficient for this purpose?

In 1917, Justice Cardozo (then judge of the New York Court) wrote the often cited opinion in the case of Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915. The court sums up the facts in the cited case in the following words:

[fol. 64] "In brief, the defendant maintains an office in this state under the direction of a sales agent, with eight salesmen, and with clerical assistants, and through these agencies systematically and regularly solicits and obtains orders which result in continuous shipments from Pennsylvania to New York.

"To do these things is to do business within this state in such a sense and in such a degree as to subject the corporation doing them to the jurisdiction of our courts."

It might be added that all orders secured through the New York office were subject to confirmation at the home office in Pennsylvania. No person connected with the New York office had authority to receive payment for shipments of coal, or to receive or endorse checks. At the conclusion of a discussion of the International Harvester case, *supra*, the court stated:

"That case goes farther than we need to go to sustain the service here. It distinguishes Green v. Chicago, B. & Q. Ry. Co. (205 U. S. 530) where an agent in Pennsylvania solicited orders for railroad tickets which were sold, delivered and used in Illinois. *The orders did not result in a continuous course of shipments from Illinois to Pennsylvania. The activities of the ticket agent in Pennsylvania brought nothing into that state.* In the case at bar, as in the International Harvester case, there has been a steady course of shipments from one state into the other. The business done in New York may be interstate business, but business it surely is." (Italics ours.)

The court further stated:

"In construing statutes which license foreign corporations to do business within our borders we are to avoid unlawful interference by the state with interstate commerce. The question in such cases *is not merely whether the corporation is here*, but *whether its activities are so related to interstate commerce that it may, by a denial of a license, be prevented from being here.* * * * If in fact it is here, if it is here, not occasionally or casually, but with a fair measure of permanence and continuity, *then, whether its business is interstate or local*, it is within the *jurisdiction of our courts.* * * * *The nature and extent of business contemplated by licensing statutes is one thing. The nature and extent of business requisite to satisfy the rules of private international law may be quite another thing.* * * * Unless a foreign corporation is engaged in business within the state, it is not brought within the state by the presence of its agents. But there is no precise test of the nature or extent of the business that must be done.

All that is requisite is that enough be done to enable us to say that the corporation is here." (Italics ours.)

The holding in the Tauza case may be boiled down to this, that where there is a systematic and regular solicitation of orders by an agent or agents of the corporation, resulting in a continuous shipment of goods into the state where the agents are operating, together with the maintenance of a permanent office in the state by the corporation, the corporation can be said to be doing business in that [fol. 65] state so as to make it amenable to process by the courts of such state.

The cases dealing with the question here presented are multitudinous. While it is probably true that most of the cases which hold the corporation was doing busines in the state so as to make it *amenable to process* have some slight activity on the part of the agent in addition to the solicitation of orders resulting in a continuous flow of the corporation's products into the state, yet it seems to us the basic fact upon which the courts have determined that the corporation was doing business was the regular and systematic solicitation of orders by the agent, resulting in the continuous flow of the corporation's products into the state by means of interstate carriers.

The following are typical cases holding that the corporation was doing business in the state where service was attempted to be made. From our discussion of these cases will appear what facts, in addition to mere solicitation, the courts considered in determining that the corporation was doing business in the state. It will also appear from some of the decisions that a regular and systematic course of solicitation of orders by the agent of the corporation, resulting in a continuous flow of the corporation's products into the state, should be and is sufficient to warrant the court in holding the corporation was doing business in the state. Many of these cases cite and rely upon the International Harvester case. Lamont v. Moss Cigar Co., 218 Ill. App. 435; George A. Hormel & Co. v. Ackman, 117 Fla. 419, 158 So. 171, where in addition to soliciting orders the agent made some collections; Wheeler v. Boyer Fire Apparatus Co., 63 N. D. 403, 248 N. W. 521, where the agent's authority consisted in soliciting orders and making collections (this case refers to and quotes from the International

Harvester case, *supra*, Tauza v. Susquehanna Coal Co., *supra*, and American Asphalt Roof Corp. v. Shankland, 205 Iowa 862, 219 N. W. 28, of which more will be said later), Dobson v. Maytag Sales Corp., 292 Mich. 107, 290 N. W. [fol. 66] 346; International Shoe Co. v. Lovejoy, 212 Iowa 204, 257 N. W. 576, wherein the court stated:

"It appears from the foregoing recital of the facts that, in addition to the solicitation of orders from customers for shoes, Sommerhauser sought to induce Kittenhoff and others to engage in the shoe business. This appears to have been a part of his duties as a salesman. He was authorized to receive checks in payment of accounts and to transmit the same to petitioner, but not to cash the same or to receive money. Petitioner did not, in a general sense at least, maintain an office or place of business in this state. It did, however, permanently maintain a sample or display room in a hotel in Des Moines which was visited by actual or prospective customers to whom sales of merchandise were made. This method of transacting the business amounted to something more than the mere solicitation of orders. The practice of aiding, if not inducing, others to establish stores and engage in the shoe business in this state also amounted to more than the mere solicitation of orders."

In the case of American Asphalt Roof Corp. v. Shankland, 205 Iowa 862, 219 N. W. 28, hereinbefore referred to, the defendant was a foreign corporation having its principal place of business in Kansas City, Missouri. The agent on whom service was made was a traveling salesman, with authority to solicit orders which were forwarded to the home office for acceptance. *He had no authority to accept orders, make contracts, receive payment of any kind, and maintained no office or permanent place of business within the state of Iowa.* The defendant furnished him with an automobile, and paid the expenses of its operation. The agent resided in Des Moines, and frequently sought retail customers to patronize the dealers to whom he made sales. The court, in reaching its decision that the corporation was doing business in Iowa, relied principally upon the Tauza and the International Harvester cases, *supra*. After quoting from the latter case, the court stated:

"The continuous course of business referred to was *the solicitation of orders, which were sent to another state, and*

in response to which the machines of the Harvester Company were delivered within the state of Kentucky. The court said, 'This was a course of business,—not a single transaction.' It is true that the above language is followed by a reference to the fact that the agents were authorized to receive notes, drafts, checks, money, etc., and transmit the same to the Harvester Company. Such transactions were, however, merely formal acts, and involved the exercise of no discretion on the part of the agent, and were always referable to transactions closed by the approval of the order, and, no doubt, generally by the delivery of the machines. *These transactions are not given significance in* what the court terms a continuous course of business." (Italics ours.)

[fol. 67] It is apparent that the Iowa court was of the opinion the court in the International Harvester case attached no particular importance to the fact that the agent was authorized to receive notes, checks, drafts, etc. This is evident from the concluding words in the opinion of the Shankland case:

"We recognize that the question is by no means free from difficulty, but it seems to us that the facts disclosed by the record establish that petitioner was, and has been for many years, engaged in *a systematic and continuous course of business in the solicitation of orders* and the delivery and shipment of merchandise to numerous customers, new and long established, and that such conduct constitutes doing business in this state within the meaning of that term as used in section 11072 and as construed and interpreted by the decisions of the supreme court of the United States. If the corporation was doing business in this state, it will hardly be questioned that Killingsworth [the agent] was a proper person upon whom service might be had." (Italics ours.)

The case of West Publishing Co. v. Superior Court, 20 Cal. (2d) 720, 128 P. (2d) 777, is, in our opinion, a well considered case. Many cases are cited, among them Green v. Chicago, B. & Q. Co., *supra*, and People's Tobacco Co. v. American Tobacco Co., *supra*, often cited to sustain the contention that a foreign corporation is not doing business in the state where service of process was attempted to be

made. It also cites, and to a great extent relies on, the Tauza and International Harvester cases, *supra*, and recognizes that the adjudicated cases since the International Harvester decision have not been in complete agreement as to the precise factors additional to *mere solicitation* which motivated the court in the Harvester case to sustain the jurisdiction of the Kentucky court. The case goes on to say that while the decision in People's Tobacco Co. v. American Tobacco Co., *supra*, seems to have stressed the fact that the agents in the Harvester case were authorized to receive payments in Kentucky, other leading authorities have viewed the *quantity* and *continuity* of the solicitation of business in Kentucky as the controlling factor of the decision, rather than the mere additional circumstances of collecting money, citing, as sustaining this latter theory, Tauza v. Susquehanna Coal Co., *supra*, and American Asphalt Roof Corp. v. Shankland, *supra*.

[fol. 68] A good discussion of the question here presented will be found in Dahl v. Collette, 202 Minn. 544, 279 N. W. 561, where practically all the leading cases decided up to that time (April, 1938) are cited and discussed. We quote from the cited case:

"Courts are agreed that solicitation, if the only evidence of the visitation of a foreign corporation, will not warrant a finding that the corporation is doing business so as to be subject to process. [Citing among other authority Green v. C. B. & Q. Ry., *supra*.] This is not to say that solicitation, regularly and systematically conducted, within the jurisdiction is without import in deciding whether the corporation is doing business therein. Its simple meaning is that solicitation alone without other corroborating circumstances is not of sufficient strength to sustain the inference that the corporation is present . . . Solicitation aided by further manifestations of corporate presence no one of which is singly capable of carrying the weight of the inference will warrant the conclusion that it is doing business here . . .

"Solicitation in regular course of business, together with acceptance and performance of the contract within the state, will give ample ground for the conclusion of corporate presence . . . Or if the solicitation results in a continuous flow of goods into the state and if payment therefor is made within the state, these factors altogether

support the inference that the corporation is present doing business * * * *It has also been held that if regular and systematic solicitation concurs with a continuous flow of goods into the state the inference is permissible* * * * Solicitation joined with adjustment of complaints as a part of the ordinary course of business also sustains the inference * * *. The substance of the cases seems to be that although the rule against the sufficiency of solicitation alone still persists, 'it readily yields to slight additions.'" (Italics ours.)

The court then states that the facts show that

"There was a solicitation of orders, which although not incessant in the sense that it was being conducted here at all times, yet was regular and systematic rather than incidental and haphazard. The volume of its products coming into the state as the direct result of this solicitation, while perhaps inconsiderable in relation to the total of its national business, was nevertheless substantial. The flow of its manufactures into the state appears to have been constant and continuous. The compromise and adjustment of disputes with its customers appears also to have been habitually carried on here. Added to these circumstances is the fact of the maintenance of display and demonstration rooms at conventions attended by present and prospective customers under the management of an officer or agent of appellant. This occurrence is not of great weight, neither is it quite without significance * * *.

"While it may be admitted that no one of the factors relied upon by respondents to demonstrate the corporate presence within the state of appellant is capable of sustaining that inference, and while the courts in some instances, as has been pointed out, are divided as to the sufficiency of any two of them, we are confident that their cumulative strength is ample to support the conclusion we reach that appellant was doing business and was therefore present within this state at the time service of the summonses and complaints was made on Collette as its agent." [fol. 69] The Wisconsin court in In re Petition of Northfield Iron Co., 226 Wis. 487, 277 N. W. 168, places the same interpretation upon the International Harvester case as did

the Iowa court in the Shankland case and the New York court in the Tauza case, saying:

"It is our conclusion that so far as the question of state power is concerned, the International Harvester Co. case, *supra*, must be taken to make valid a statute by a state providing for service upon the soliciting agent of a foreign corporation whose only activity aside from a solicitation of orders within the state is the filling of these orders through the instrumentality of interstate commerce."

In the case of Harbich v. Hamilton-Brown Shoe Co., 1 F. Supp. 63, the Federal district court for the southern district of Texas had before it a set of facts very much like those in the instant case. In the cited case service was made upon one Dan Smith, a salesman for the shoe company in the state of Texas. So far as the opinion indicates, Dan Smith had authority only to solicit orders, which he did in a regular and systematic way, by appearing at customer's stores and offering samples for the customer's inspection. Smith had no authority on behalf of the shoe company to sell merchandise, or otherwise bind the shoe company, but was solely a *soliciting agent*. The orders were taken subject to acceptance by the shoe company at its home office in St. Louis, Missouri. When the orders were accepted, the goods were shipped from outside the state of Texas in interstate commerce. The court held the shoe company was doing business in Texas, and that service on Smith was sufficient service on the company.

A very recent Federal case dealing with this question is Frene v. Louisville Cement Co. (U. S. Court of Appeals for D. C.), 134 F. (2d) 511, decided January 25, 1943. In the cited case, the defendant Cement Co. was a Kentucky corporation, having its principal place of business at Louisville, Kentucky. It maintained no office or place of business in the District of Columbia. Its business was the manufacture and sale of cement and cement products. [fol. 70] Lovewell, the agent upon whom service was had, resided in a suburb of Washington. His telephone number, which was displayed, together with his home address, his name and that of defendant, upon his business card, was listed in the Washington directory. Lovewell had authority to solicit orders for defendant's products and his territory comprised all of Maryland, except the two west-

ern counties, the District of Columbia, and the eastern part of Virginia. He spent two-thirds or three-fourths of his time in Washington, which he said was "the biggest market in my territory." The volume of business done in Washington was large. Lovewell had no authority to conclude contracts or make binding sales. When he received orders he forwarded them to the home office in Louisville, where they were accepted or rejected. Shipments on orders accepted were made in interstate commerce to building supply dealers in the vicinity of the job, who in turn supplied them to the contractors. Lovewell frequently visited jobs in course of construction, where defendant's products were being used, and on these occasions he would note the manner in which the products were being installed or used, and if any difficulties were being experienced, he would make suggestions as to how to overcome them. He would also go over any complaints and report them to the home office, but he had no authority to finally make adjustments or compromises. We quote from the opinion, which was written by Justice Rutledge, and which we think contains a sound criticism of the solicitation rule:

"The tradition has grown that personal jurisdiction of a foreign corporation cannot be acquired when the only basis is "mere solicitation' of business within the borders of the forum's sovereignty. And this is true, whether the solicitation is only casual or occasional or is regular, continuous and long continued.

"The tradition crystallized when it was thought that nothing less than concluding contracts could constitute 'doing business' by foreign corporations, an idea now well-exploded. It is now recognized that maintaining many kinds of regular business activity constitutes 'doing business' in the jurisdictional sense, notwithstanding they do not involve concluding contracts. In other words, *the fundamental principle underlying the 'doing business' concept seems to be the maintenance within the jurisdiction of a regular, continuous course of business activities, whether or not this includes the final stage of contracting.*

[fol. 71] "Furthermore, since the tradition crystallized, other developments in the law of personal jurisdiction have cast doubt upon its validity. These in general have expanded the scope of jurisdictional power over the persons of nonresidents, including foreign corporations. It is still true, generally speaking, that mere casual and occasional

acts do not furnish a sufficient basis for assertion of jurisdiction of the person in cases of nonresidents. But the nonresident motorists' statutes, which are applicable to foreign corporations, and the fact they have been so widely enacted and sustained, show two things among others. The first, like the cases sustaining jurisdiction upon a basis of 'solicitation plus,' is that contracting, casually or continuously, is not essential for jurisdictional purposes, nor is negotiation, solicitation, or other activity looking toward the formation of contracts. The second is that some casual or even single acts done within the borders of the sovereignty may confer power to acquire jurisdiction of the person, provided there is also reasonable provision for giving notice of the suit in accordance with minimal due process requirements * * * In general the trend has been toward a wider assertion of power over nonresidents and foreign corporations than was considered permissible when the tradition about 'mere solicitation' grew up. * * *

"But when jurisdiction has been extended to include some types or kinds of occasional acts and nearly all kinds of continuous operations, the rule which nullifies judicial power when a foreign corporation engages continuously and regularly in 'mere solicitation' is, to say the least, anomalous. * * * *Solicitation is the foundation of sales.* Completing the contract often is a mere formality when the stage of 'selling' the customer has been passed. No business man would regard 'selling,' the 'taking of orders,' 'solicitation' as not 'doing business.' *The merchant or manufacturer considers these things the heart of business.* It is perfectly possible, under the 'mere solicitation' rule, for a foreign corporation to confine its entire market to a single jurisdiction, yet by carefully limiting its activities there to the soliciting phase, to force each of its customers having cause for legal redress to seek it in the foreign forum of incorporation. By careful segregation of the 'selling' phase in the place of market, a substantially complete immunity to liability, in the practical sense, could be created.

"It would seem, therefore, that the 'mere solicitation' rule should be abandoned when the soliciting activity is a *regular, continuous and sustained course of business,* as it is in this case. It constitutes, in the practical sense, both 'doing business' and 'transacting business,' and should do so in the legal sense. Although the rule has not been clearly and expressly repudiated by the Supreme Court, its integ-

rity has been much impaired by the decisions which sustain jurisdictions when *very little more* than 'mere solicitation' is done." (Italics ours.)

While it is apparent that the court was of the opinion that the mere solicitation rule should be abandoned when the soliciting activity is a *regular, continuous and sustained course of business*, the court did not deem it necessary "to take the final step in repudiation in this case, since the facts are sufficient to bring it within the 'solicitation plus' rule."

Justice Edgerton, in a concurring opinion in the cited case, stated:

[fol. 72] "It has been suggested that 'the existence of jurisdiction to determine the personal liability of a corporation * * * depends on the reasonableness of its exercise' and that 'if a foreign corporation voluntarily does business within the state it is bound by reasonable regulations of that business imposed by the state * * * because it is as reasonable and just to subject the corporation to those regulations as though it had consented.' In the normal course of business appellee's agent induced appellants, in the District, to buy its product. They bought it in the District, for use in the District, from a District dealer to whom appellee had sold it. They used it in the District. The alleged defect appeared there and the alleged cause of action presumably arose there. Appellants appear to reside there. I think it is reasonable and just that they should be allowed to enforce their claim there."

We find a statement by this court in the case of Macario v. Alaska Gastineau Mining Co., 96 Wash. 458, 165 Pac. 73, quite in accord with the view expressed by Justice Edgerton:

"We think an examination of the authorities will show that the place of the arising of the cause of action has been generally regarded as of controlling force by the courts in determining the question of a defendant foreign corporation being subject to the process of the court wherein recovery is sought, whenever the question of such foreign corporation doing business generally in the state in which it is sought to be sued is one of doubt."

In the case of Grams v. Idaho National Harvester Co., 105 Wash. 602, 178 Pac. 815, the court held that the defendant, an Idaho corporation, was doing business in this state,

and was amenable to process of the courts of this state. In addition to selling combined harvesting machines in this state, the company kept on hand, in a warehouse in this state, a large quantity of repair parts for the machines. Many of these articles were sold by the warehouse company as the property of the Harvester Co., the former accounting to the latter for all sales made.

In the case of State ex rel. Kerr Glass Mfg. Co. v. Superior Court, 166 Wash. 41, 6 P. (2d) 368, we held that the solicitation of orders in this state by one Huch, a resident of this state, coupled with the fact that the Glass Co., a Nevada corporation, kept some of its goods in storage in this state, constituted doing business. Huch had no authority to accept orders, but all of the orders were taken subject to approval by the Glass Co. at its home office in Oklahoma. The Glass [fol. 73] Co. completed delivery when the products were turned over to the transportation company in Oklahoma. Bills of lading, invoices and statements were sent from the Glass Co. direct to the buyer. Remittances were made direct from buyer to seller. Huch made no collections, and had nothing to do with extending credit.

Summing up the facts in the instant case, we find that the salesmen are all residents of the state of Washington, and have definitely defined territory assigned to them. There is no storage of warehousing of goods. The activities of these agents of appellant consist of the solicitation of orders and the display of samples, sometimes in permanent display rooms. Salesmen are required to spend certain time each year in St. Louis for the purpose of receiving direct personal instructions as to their duty, as to the line of shoes which they are to offer to the trade, the method of selling, and information with reference to the construction of new types and kinds of shoes which are to be offered to the trade. Some of the salesmen rent sample rooms in business buildings, and the expense of such rental and maintenance is paid by the salesmen, who are reimbursed on an expense account by appellant. There is a detailed program followed by the company through contact with the salesmen, to keep the company's business at a high level, to eliminate differences arising in the particular territory, and to discuss credit of Washington purchasers and customers with whom the company is doing business. As a result of the activities of these agents, there is a continuous flow of appellant's product into this state by means of interstate

carriers. This course of action has been carried on over a period of years, by as many as thirteen salesmen, and the substantial volume of merchandise and the regularity of its shipment are clearly shown by the amount of commissions regularly earned by these resident salesmen.

In the case of Bankers Holding Corporation v. Maybury, 161 Wash. 681, 297 Pac. 740, this court adopted the following [fol. 74] ing definition of business, as stated in Flint v. Stone Tracy Co., 220 U. S. 107:

"'"Business" is a very comprehensive term, and embraces everything about which a person can be employed * * * "That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit."'"

It seems to us, after a consideration of the facts in this case and the authorities bearing on the question here presented, that the conclusion that appellant, through its agents, was doing business in this state so as to make it amenable to process, is inescapable, whether we follow the "corporate presence theory" or base our decision on the reasonableness of permitting the corporation to be sued in this state rather than forcing respondent to go to Missouri or Delaware to bring its action.

While we are of the opinion that the regular and systematic solicitation of orders in this state by appellant's agents, resulting in a continuous flow of appellant's product into this state by means of interstate carrier, is sufficient to constitute doing business in this state so as to make appellant amenable to process of the courts of this state, we are also of the opinion that there are additional activities shown which bring this case well within the solicitation plus rule.

On this question, appellant cites and relies on State ex rel. Paraffine Companies v. Wright, 184 Wash. 68, 49 P. (2d) 929, and Bank of America v. Whitney Bank, 261 U. S. 171. In the former case, the cause came before this court on an application for a writ of mandate to compel the Thurston county superior court to transfer the cause to King county. The application of the Paraffine Co. was based upon the claim that it transacted no business in Thurston county, had no office there, and that there was no person residing in Thurston county upon whom process against it could be served. It appears that there was no person or company in Thurston county having the relationship of

agent to the Paraffine Co. All purchases made by Olympia customers of the company were made at the Seattle office, [fol. 75] where the principal place of business of the company was located. The customers of the Paraffine Co. in Olympia handling its products did so as independent merchants, and not as agents. The case is not in point.

The factual situation in the second case above cited is so different from that in the instant case that it cannot be considered helpful herein.

The second assignment of error in the case at bar is that Mr. Alley, upon whom service was made, was not such an agent as is contemplated by Rem. Rev. Stat., § 226. In view of the conclusion reached by us on the first question presented, we are of the opinion this question can be briefly disposed of.

The entire business of appellant in the state of Washington was carried on by Mr. Alley and other agents having like authority. Subsection 9 of § 226 states that if the suit be against a foreign corporation doing business within this state, service may be made on "any agent."

We stated in Barrett Mfg. Co. v. Kennedy, 73 Wash. 503, 131 Pac. 1161, that

"The words of the statute 'any agent' were intended to have a broad meaning, and must be liberally construed to effectuate the legislative intent. While they may not include a day laborer or an employee who has no authority to represent the corporation in any way other than to discharge his daily task, they must be held to include all such agents as represent the corporation in either a *general* or a *limited* capacity." (Italics ours)

See, also, Pacific Typesetting Co. v. International Typographical Union, 125 Wash. 273, 216 Pac. 358.

It is interesting to note, in view of what we have said on the first question and in the consideration of the second, that in the last cited case we quoted with approval the following statement found in Beach v. Kerr Turbine Co., 243 Fed. 706:

" 'The tendency of legislation and of judicial decisions is and has been to make it easy to obtain jurisdiction of foreign corporations. As was said by Mr. Justice Gray in Barrow Steamship Co. v. Kane, 170 U. S. 100, . . .

[fol. 76] "The constant tendency of judicial decisions in

modern times has been in the direction of putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them.' "

On this question we desire to again call attention to the following statement found in the case of Tauza v. Susquehanna Coal Co., *supra*:

"It is not necessary to show that express authority to accept service was given to the defendant's agent. His appointment to act as agent within the state carried with it implied authority to exercise the powers which under our laws attach to his position * * * When a foreign corporation comes into this state, the legislature, by virtue of its control over the law of remedies, may define the agents of the corporation on whom process may be served * * *. If the persons named are true agents, and if their positions are such as to lead to a just presumption that notice to them will be notice to the principal, the corporation must submit * * * The corporation is here; it is here in the person of an agent of its own selection; and service upon him is service upon his principal."

We do not deem further citation of authority necessary. We are of the opinion appellant's second assignment is without merit.

The remaining question is whether or not the imposition upon appellant of liability for contributions to the Washington unemployment compensation fund is an unconstitutional burden upon interstate commerce.

We stated in Bates v. McLeod, 11 Wn. (2d) 648, 120 P. (2d) 472, that the contributions exacted under the unemployment compensation act constituted an excise tax upon the privilege of employing others. Employment is defined by Rem. Rev. Stat. (Sup.), § 9998-119 (g) (1), as follows:

"'Employment,' subject to the other provisions in this subsection, means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied."

It would seem that the act clearly contemplates that contributions shall be paid into the unemployment compensation fund for such employment as we have in this case. Assuming that appellant is engaged in interstate commerce,

by reason of the fact that its agents take orders in this state for goods to be shipped from another state, yet we are of [fol. 77] the opinion that the contributions exacted by the unemployment compensation act from appellant do not constitute an unlawful burden on interstate commerce. Probably to meet such an argument as is made by appellant herein, and to permit the unemployment compensation acts of the several states to cover the largest possible range of employees, Congress passed the following statute:

"No person required under a state law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the state law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce." 26 U. S. C., § 1616 (a).

Appellant contends that it is not required, under the state law, to make payments to the unemployment fund. We see no merit in this contention, as the act defines employing unit as follows:

"'Employing unit' means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign * * * which has or subsequent to January 1, 1937, had in its employ eight or more individuals performing services for it within this state." Rem. Rev. Stat. (Sup.), §9998-149 (e).

An employer is defined by the act as

"Any employing unit which in each of twenty different weeks within either the current or the preceding calendar year * * * has or had in employment eight or more individuals * * * *" Rem. Rev. Stat. (Sup.) § 9998-119 (f) (1).

Appellant is a foreign corporation having in its employ for several years more than eight individuals in each of twenty different weeks, performing services for it within this state, and so, under the plain terms of the act, is required to make contributions to the unemployment compensation fund.

We are of the opinion Congress meant just what it said in the above quoted statute, and that appellant's objection to payment of contributions on this ground is not tenable. But even without the act of Congress above set out, we do not think appellant could avoid liability upon this ground. The cases cited by appellant are cases dealing with taxes imposed on doing business, and the imposition of such taxes on corporations doing business in interstate com- [fol. 78] merce would clearly tend to burden that commerce. This court pointed out the distinction between such cases (tax on engaging or continuing within this state in any business) and the instant case, in Paramount Pictures Distributing Co. v. Henneford, 184 Wash. 376, 51 P. (2d) 385, where the court stated:

"It being an excise tax for the purpose of raising revenue, the act of the legislature imposing it was not passed in the exercise of the police power. Whether a law is enacted in the exercise of that power, depends upon whether the primary purpose is to raise revenue or to regulate industry."

In the instant case, the act under consideration was passed in the exercise of the police power, for the purpose of relieving distress in this state resulting from involuntary unemployment.

In the case of United Fruit Co. v. Department of Labor & Industry, 344 Pa. 172, 25 A. (2d) 171, the Pennsylvania court held that the fruit company, engaged wholly in foreign commerce, with its principal office in Boston, but employing about three hundred persons within the state of Pennsylvania, was subject to the workmen's compensation act of Pennsylvania, although it required no authority from that state to carry on its business. The court then stated:

"The fact that an employe working within the state of Pennsylvania is engaged in interstate or foreign commerce does not necessarily take him outside the range of the workmen's compensation act, which applies * * * 'to all accidents occurring within this commonwealth.' It is well settled that, in the absence of federal legislation on the subject, a state may, without violating the commerce clause of the federal constitution, legislate concerning relative rights and duties of employers and employes while within its borders, although engaged in interstate commerce."

This view was sanctioned by the United States supreme court in Valley Steamship Co. v. Wattawa, 244 U. S. 202. In the cited case the steamship company was engaged in interstate commerce, and contended that it was not liable under the Ohio workmen's compensation act. Answering this contention, Mr. Justice McReynolds, speaking for the court, said:

[fol. 79] "We are asked to reverse the action of the Court of Appeals upon two grounds. First, because the company was engaged in interstate commerce and therefore could not be subjected to the compensation act without burdening such commerce contrary to the commerce clause of the Federal Constitution . . .

"The first point relied upon is entirely without merit and inadequate to support our jurisdiction. In the absence of congressional legislation the settled general rule is that without violating the commerce clause the states may legislate concerning relative rights and duties of employers and employees while within their borders although engaged in interstate commerce."

In conclusion, we are of the opinion the unemployment compensation act does not impose a burden upon interstate commerce, in so far as the business of appellant is concerned.

The judgment of the trial court is affirmed.

Jeffers, J.

We concur: Beals, J., Steinert, J., Blake, J., Robinson, J., Mallery, J., Grady, J.

[fol. 80] DISSENTING OPINION

SIMPSON, C. J. (dissenting):

As a member of this court, I fell impelled by a strong sense of duty to dissent from the able opinion prepared by the majority. I write this dissent prior to completion of its circulation among my fellow judges. I write it with a sincere hope that I may change the views of the writer and convince all of the judges that the majority opinion as now written is incorrect.

This case comes to us upon an agreed statement of facts which reads:

"International Shoe Company is a Delaware Corporation. It has its principal place of business in the City of St. Louis,

Missouri. Its principal business consists of manufacture and sale of boots, shoes and other footwear. It maintains places of business where manufacturing is carried on and from which its merchandise is sold in the states of Missouri, Arkansas, Illinois, Kentucky, North Carolina, Pennsylvania, New York and New Hampshire. Its merchandise is sold through its several selling divisions or branches, the following branches being the only ones doing any sort of business with residents of the State of Washington:

"Roberts, Johnson & Rand
Peters
Friedmann—Shelby
Specialty

"It has not a place of business in the State of Washington; maintains no general agent in the State of Washington. It makes no contracts, either of sale or of purchase in the State of Washington. It maintains no stock of merchandise in the State of Washington and makes no deliveries of merchandise in intra state commerce in the State of Washington. * * *

"The manner in which the business of International Shoe Company is carried on in the State of Washington, is generally as follows:

"Salesmen are employed from the head office at St. Louis and work under the direct supervision and control of sales managers with offices in St. Louis, and are required as part of their duties to spend certain time each year in St. Louis, Missouri for the purpose of receiving direct personal instructions as to their duties, as to the line of shoes which they are to offer to the trade, the methods of selling, conditions of selling, and to receive information with reference to construction and new types and kinds of shoes which are to be offered to the trade. Said employees or salesmen [fol. 81] are given a sample line, which samples uniformly consist of only one shoe of a pair, and no sales are made by salesmen from such samples. They are merely used to display to prospective purchasers. Some of the salesmen rent sample rooms in business buildings and the expenses of such rental and maintenance is paid by the salesmen and they are reimbursed on an expense account by the International Shoe Company. Other salesmen maintain no permanent sample rooms, but rent rooms in hotels or business buildings in the various cities to which they travel.

"Such transactions as the International Shoe Company has with persons in business, or who reside in the State of Washington, involving the sale and distribution of its merchandise to merchants in the State of Washington *and* are conducted as follows:

"Each salesman is given a designated territory in which to solicit orders. The authority of the salesman is limited to exhibiting samples of the merchandise for which they solicit orders to merchants who are probable buyers thereof; endeavor to procure orders on prices and terms fixed by the International Shoe Company. If orders are obtained, to transmit them to the office of the International Shoe Company outside the State of Washington for acceptance or rejection, and if orders are accepted by the International Shoe Company the merchandise called for by such orders is shipped F. O. B., shipping point, from outside of the State of Washington. Practically all merchandise shipped by International Shoe Company into the State of Washington is on orders approved in St. Louis, Missouri and shipped therefrom. The merchandise which is shipped into Washington is invoiced at the point of shipment and invoices are payable at point of shipment from which point collections are made. No salesman has power or authority to bind the International Shoe Company to any contract or to finally conclude any transactions in its behalf, the salesman's duties and authority being limited strictly to the solicitation of orders.

"The salesmen are under the direct control and direction of the International Shoe Company and are not permitted to be engaged in an independently established trade, occupation, profession or business of the same nature involved in their employment by the International Shoe Company.

"On October 10, 1941, a copy of Notice of Assessment by the Commissioner of Unemployment Compensation and Placement, was delivered to and left with one, E. S. Alley, a salesman of the International Shoe Company, at Seattle, Washington, demanding payment of delinquent contributions or interest, in the sum of $6000. Said sum was not arrived at by calculation of the wages earned by salesmen of the International Shoe Company within the State of Washington, but was an arbitrary figure set by the Commissioner. E. S. Alley is a salesman of the International Shoe Company, employed upon the terms and under the authority and for the purpose as hereinabove referred to for

employees of International Shoe Company within the State [fol. 82] of Washington. A copy of the same notice of assessment was also placed in the United States mails, postage fully prepaid, addressed to International Shoe Company at St. Louis, Missouri, on the 10 day of October, 1941. Thereafter, and on the 18th day of October, 1941, International Shoe Company filed with the Department of Unemployment Compensation and Placement, its special appearance, motion to quash service and objection to jurisdiction."

The principal question is whether appellant is doing an intrastate business or is engaged in interstate commerce. Involved in this question is the determination of whether the soliciting of business amounted to "doing business" so as to render the foreign corporation amenable to service of process.

The appellant was not properly served within the meaning of Rem. Rev. Stat., § 226, which reads:

"The summons shall be served by delivering a copy thereof, as follows:

"• • • •

"9. If the suit be against a foreign corporation • • • doing business within this state, to any agent, cashier or secretary thereof; • • •"

If at the time E. S. Alley, one of the salesmen mentioned in the stipulated statement of facts, was served with process, the company was doing an interstate business, of course our courts would have no jurisdiction, because the Federal government, under the provisions of subsection 3, of § 8, Art. I of the constitution, has exclusive power

"To regulate commerce with foreign nations and among the several states and with the Indian tribes;"

This court is committed to the rule that corporations doing an interstate business cannot be held liable to our state laws. Lilly-Brackett Co. v. Sonnemann, 50 Wash. 487, 97 Pac. 505; Smith & Co. v. Dickinson, 81 Wash. 465, [fol. 83] 142 Pac. 1133; Alaska Pacific Navigation Co. v. Southwark Foundry & Machine Co., 104 Wash. 346, 176 Pac. 357; Rawleigh Co. v. Harper, 173 Wash. 233, 22 P. (2d) 665; State ex rel. Paraffine Companies v. Wright, 184 Wash. 69, 49 P. (2d) 929; Brandtjen & Kluge, Inc. v. Nanson, 9 Wn. (2d) 362, 115 P. (2d) 731.

The phrase "doing business within this state" has been defined on many occasions. In Smith & Co. v. Dickinson, supra, the facts were that a foreign corporation manufactured merchandise in the state of Nebraska and sold some of its products in this state. Its method of selling was that its representatives took orders here for the merchandise and forwarded those orders to the company at Omaha for approval or rejection. If the order was accepted, the goods were shipped from Omaha to the buyer in this state and sold on credit. The salesman had offices in Seattle and Spokane, at which places he retained exhibit samples belonging to the corporation and also made trips throughout the state for the purpose of selling the goods and at times paid the expenses of proposed customers from their homes to Seattle and Spokane. The agent did not have authority to complete sales; neither could he extend credit nor make collections. In addition the record disclosed that the agent resold certain goods to other customers and at one time went so far as to sell some of his samples, the sale being closed through the office at Omaha. This court upheld the trial court's decision that the company was not doing business in the state of Washington.

The majority opinion passes the Dickinson case with the observation that it is not in point because it referred to the [fol. 84] statute relating to the payment of a fee before an action could be instituted in the courts of this state.

We did not take that view of the case in State ex rel. Paraffine Companies v. Wright, supra.

Nor did the Federal courts so consider it in the cases of Johanson v. Alaska Treadwell Gold Mining Co., 225 Fed. 270; Zimmers v. Dodge Brothers, 21 F. (2d) 152; and Klabzuba v. Southern Pac. Co., 33 F. (2d) 359.

The rule laid down in the foregoing case was approved in the following cases: Macario v. Alaska Gastineau Mining Co., 96 Wash. 458, 165 Pac. 73; Rawleigh & Co. v. Harper, supra; State ex rel. Paraffine Companies v. Wright, supra; Brandtgen & Kluge, Inc. v. Nanson, supra; and Proctor & Gamble Co. v. King County, 9 Wn. (2d) 655, 115 P. (2d) 962.

I call the attention of the students of this problem to the extensive citation of cases in 60 A. L. R., pages 1020 to 1030, inclusive. A reading of those cases brings forth the information that the principle announced in Smith & Co. v. Dick-

inson, supra, is approved by practically all the courts in the Union.

In another line of cases, we have considered the question of whether a corporation is doing business within a certain county. This proposition has arisen in those cases in which a corporation was sued and it contended that the court did not have jurisdiction within the provisions of Rem. Rev. Stat., § 205-1, which reads:

"An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the [fol. 85] commencement of the action. For the purpose of this act, the residence of a corporation defendant shall be deemed to be in any county where the corporation transacts business or has an office for the transaction of business or transacted business at the time the cause of action arose or where any person resides upon whom process may be served upon the corporation, unless hereinafter otherwise provided."

In the following cases, this court has held that a corporation was not doing business in a county unless it transacted therein a part of its usual and ordinary business, which must be continuous in the sense that it is distinguished from merely casual or occasional transactions: State ex rel. Wells Lumber Co. v. Superior Court, 113 Wash. 77, 193 Pac. 229; State ex rel. American Savings Bank & Trust Co. v. Superior Court, 116 Wash. 122, 198 Pac. 744; Alto v. Hartwood Lumber Co., 135 Wash. 368, 237 Pac. 987; State ex rel. Seattle National Bank v. Joiner, 138 Wash. 212, 244 Pac. 551; State ex rel. Yakima Trust Co. v. Mills, 140 Wash. 357, 249 Pac. 8; State ex rel. Harrington v. Vincent, 144 Wash. 246, 257 Pac. 849; State ex rel. Kerr Glass Manufacturing Co. v. Superior Court, 166 Wash. 41, 6 P. (2d) 368; State ex rel. Hoffman v. Superior Court, 168 Wash. 472, 12 P. (2d) 607; State ex rel. Paraffine Companies v. Wright, supra.

I call especial attention to the last state case cited, and shall discuss the Federal case later. In that case, the question presented was whether or not the Paraffine Companies was transacting business in Thurston county at the time its principal place of business was in King county. The facts were that the company sent salesmen throughout the state to call upon prospective purchasers and to obtain orders

which were transmitted to Seattle. In case the orders [fol. 86] were approved by the credit department, the sales were made in the home office. No authority to bind the company to sales was given to the salesmen, and all orders were subject to approval. Deliveries were made either from the Seattle warehouse or the factory in California. The products were sold to three merchants of Olympia, two of whom were retail dealers. One of them, the Washington Veneer Company, was supplying other dealers. The salesmen accompanied representatives of the veneer company to various dealers in Thurston county. The dealers were told that the products of the Paraffine Companies would be handled by the local company, which would supply the dealers. The transactions were made in accordance with those statements. It appears that the veneer company ordered goods through the salesmen and made payments approximately every thirty days. This court held that the Paraffine Companies was not transacting business in Thurston county, and, in so doing, stated:

"While the veneer company is referred to as a distributor, it purchases from the Paraffine Companies at a discount, in the course of trade, and resells to its own customers at a profit. The other two concerns purchase, in ordinary course, the products that are needed to supply their immediate customers. While the Paraffine Companies' salesmen stimulate trade and solicit the use of its products, purchases are made by the Olympia dealers at the Seattle office.

"We are clear that the Paraffine Companies is not transacting business within Thurston county, as the term has been defined by this court."

The decision was bottomed upon the Dickinson case, from which a liberal quotation was made.

I now call attention to a third series of cases in this state, some of which are not mentioned by the majority, which are [fol. 87] directly in point and decisive of the question presented in this case.

In Rich v. Chicago, B. & Q. R. Co., 34 Wash. 14, 74 Pac. 1008, this court held that a railway company was not doing business in this state when it had an agent here who solicited passenger and freight traffic. In that case, we held that the trial court's judgment quashing service upon the agent who solicited the business was correct.

In Arrow Lumber & Shingle Co. v. Union Pac. R. Co., 53 Wash. 629, 102 Pac. 650, it was held that a railway company was not doing business in this state when it maintained an office in Seattle from which advertising matter of the company was distributed and freight and passenger business was solicited. It is true that the agent was paid by other companies, but it is equally true that tickets were sold which frequently were for passage over the defendant railroad company's lines.

In Royce v. Chicago & Northwestern R. Co., 90 Wash. 378, 156 Pac. 16, this court approved the action of the trial court in quashing service against a railroad company. Service was made against one who was advertised as the "general agent" of the defendant. The decision was based entirely upon Arrow Lumber & Shingle Co. v. Union Pac. R. Co., supra. In passing, the court stated:

"Considering the multitude of corporations and that, unlike individuals, they can be served through agents, all courts have shrunk from a rule which would soon swamp home tribunals with foreign brawls. Nor have we any desire, through the same rule, to expose our own incorporated merchants and carriers on like service to suits in every other state. Undoubtedly the universal opinion that solicitors for nonresident railroads and commercial houses [fol. 88] are not agents for local service arises from these two apprehensions, and it was also foreseen to be unfair, as well as injurious to interstate commerce, to subject such principals to suits in our more than forty states, while the plaintiffs in most cases would be exposed to suit only at home."

In Macario v. Alaska Gastineau Mining Co., supra, this court determined that a mining company was not doing business in this state to an extent to give our courts jurisdiction over it. Its only business was to maintain an office in Seattle and an agent who was named "supply and forwarding agent" and whose duty it was to forward supplies to the company in Alaska. The agent also made hotel and transportation reservations for officers and employees of the company who passed through Seattle on their way to Alaska. That agent had authority to make contracts of purchase when any considerable quantities had to be approved by his home office.

In Alaska Pac. Nav. Co. v. Southwark Foundry & Machine Co., supra, it was held that a person was not an agent who was merely employed as a mechanical engineer of a foreign corporation for the purpose of installing a piece of machinery.

In Watson v. Oregon Moline Plow Co., 113 Wash. 110, 193 Pac. 222, we held that a foreign corporation was not doing business in the state through an agent where the person who it was claimed was an agent was merely buying machinery from the foreign corporation and selling it here on his own account.

As I have mentioned, the Federal courts have passed upon this question.

In Johanson v. Alaska Treadwell Gold Mining Co., supra, an attempt was made to sue a gold mining company in the Federal court of this state. The defendant was a Minnesota corporation and had not complied with the laws of Washington authorizing it to do business here. It had [fol. 89] general offices in Alaska and in San Francisco. It appeared further that its agent had purchased goods, wares and merchandise in Seattle with direction that the same be shipped to the company at Treadwell, Alaska; that all such purchases were subject to the approval of the company; that the duties of the agent were to see that the goods were transported or forwarded from Seattle to Treadwell, Alaska; and that the agent did not pay for any goods or disburse any money. A motion was made to quash the service of summons made upon the agent in Seattle. The Federal court granted the motion and quashed the service, and, in so doing, based its decision upon, and quoted from, the Dickinson case, supra.

In Zimmer's v. Dodge Brothers, supra, the Federal court in Illinois had before it the question of what was doing business in the state of Illinois. Referring to the facts in the case, the court set them out as follows:

"It is organized for, and does the business of, manufacturing, selling, and dealing in automobiles and automobile parts and accessories. Its principal office is Baltimore, Md. Its factories and principal place of business are located at Hamtramck, Mich., near Detroit, and that is the distributing center for the company's products. It does not have sales agents throughout the country, but sells to independent dealers, who in turn sell to associate dealers or other

dealers, or directly to the ultimate purchasers or users. The relation between the company and the dealers is that of vendor and vendee. Dealers are appointed under a written 'dealer's agreement,' which becomes effective only upon execution by the company at Hamtramck after execution by the dealer. Dodge Brothers, Inc., grants to the dealer the right to purchase Dodge Brothers motor vehicles and parts for resale in a designated territory, but the manufacturer is not bound to deliver any specified quantity. The manufacturer delivers the motor vehicles and parts to the dealer, by delivering them to a common carrier at Hamtramck, Mich., and thereafter the dealer assumes all the risk of loss and damage. The dealer pays for the motor vehicles and parts purchased, either in cash at the defendant's factory or on presentation of sight draft against bill of lading. Each dealer, at his own expense, maintains salesrooms for the purposes of exhibiting and selling the motor vehicles and parts.

"The defendant has in its employ 25 district representatives, located in 25 of the principal cities of the United [fol. 90] States. One of the district representatives is located in Chicago and has an office here. His duties are to look after the interests of the defendant in the Chicago district and to make reports to the defendant from time to time; to investigate and interview men available as dealers and submit recommendations to the officials of the defendant corporation for final approval; to observe if subdealers get an adequate supply of cars from dealers; to assist in settling disputes between dealers; to help the dealers with their sales and service problems; to stimulate sales contests among dealers; to advise the dealers in regard to their used car problems; to inform the dealers about methods of organizing; to talk to salesmen about problems of salesmanship; and to keep the defendant fully informed of conditions prevalent and events happening with respect to the industry in his district.

"He takes no active part in the sale of motor vehicles or parts; he has no authority to make contracts on behalf of the defendant corporation, nor has he done so; he maintains his office and makes all contracts, relating to the upkeep of his office, on his own behalf, and is reimbursed for his expenditures weekly by checks from Detroit, Mich.; his salary check is sent to him bimonthly from Detroit, Mich.; he takes the lease for office space in his own name; he keeps

has bank account in his own name, without reference to his position as district representative; and his letter-heads do not represent him to be an agent of Dodge Brothers, Inc.

"The district representative has no authority to commit the defendant finally in any way. He has a secretary, whose salary is paid by the company's check from Hamtramck. Persons inquiring at the office in Chicago with reference to service or purchase or exchange of Dodge Brothers automobiles are referred to the Dodge dealer in Chicago. This secretary compiles information from dealers and transmits such information to the company at Hamtramck."

The court held in that case that the facts did not show that the defendant corporation was doing business in the state of Illinois, and quashed the service of summons. In passing upon the question involved, the court cited Rich v. Chicago, B. & Q. R. Co., supra, as sustaining authority.

Klabzuba v. Southern Pac. Co., supra, is another case decided in the Federal court for western Washington. In that case, an action was commenced against a Kentucky corporation which was doing some business in this state, but had [fol. 91] not complied with our laws relative to foreign corporations doing business here. The facts show that defendant was an interstate carrier by a railroad, but did not own any railroad in the state of Washington, nor did it receive, carry or deliver passengers or freight in this state. Service was made upon an employee of the company whose duty it was to solicit for passenger and freight traffic. The defendant maintained an office in the city of Seattle in charge of a representative who made the solicitations for passenger and freight traffic. It further appears that, when application was made, through tickets were issued from Seattle to outside points on the defendant's line by three railroad companies; that, to expedite the service, blocks of tickets were carried in stock by representatives of defendant and bore the name of one of the initial carriers, but not that of the company sued. Relative to the tickets, the facts show that they constituted a contract between the initial carrier and the passenger, the price being collected by the Southern Pacific; that thereafter an adjustment was made between that railroad company and the initial carrier; and that the defendant ultimately received from the initial carrier its share of the total purchase price.

The court referred to Johanson v. Alaska Treadwell Gold Mining Co., supra, and held that the actions of the defendant company did not constitute doing business in the state within the purview of the law giving the court jurisdiction; and, in so doing, cited as its authority Rich v. Chicago, B. & Q. R. Co., supra; Arrow Lumber & Shingle Co. v. Union Pac. R. Co., supra; Royce v. Chicago & N. W. Ry. Co., supra; and Macario v. Alaska Gastineau Min. Co., supra.

[fol. 92] The first series of cases just discussed lays down a definite uniform rule which defines doing business within this state. The second series follows the reasoning of the first and announces a rule as to what constitutes doing business in a county.

The third series of cases announces the rule relative to what amounts to doing business in this state in order to subject a corporation to actions in the state. A study of these cases brings forth the information that one precise definition of the phrase has been applied and used by this and other courts in determining whether a corporation is doing business within the meaning of Rem. Rev. Stat., § 226(9); Rem. Rev. Stat., § 205-1; or Rem. Rev. Stat. (Supp.), § 3836-2.

We should adhere to established rules and principles so long as they do not indicate a palpable mistake or violate justice, reason and law. If we do find that some of our decisions violate the principles just mentioned, we should overrule those decisions and announce a new and proper rule.

[fol. 93] In this state, we have one definition for negligence, one for contributory negligence, one for reasonable doubt, and one for proximate cause, including many other words and clauses, some used by lawyers and judges, and up until the present time, we have had one definition of what constitutes doing business in the state of Washington. I fail to see any reason for changing our rule and providing for two definitions of what is doing business within this state. The only purpose I can see is to give to the unemployment compensation commission a right not accorded to ordinary litigants.

I repeat, if the majority opinion prevails, we will have in this state two definite definitions of doing business which will confuse judges, lawyers and laymen alike.

To show the baffling condition of our cases which will arise if the majority opinion prevails, I submit the following reasonable assumed situation:

Two actions are commenced upon the same day and filed in the superior court for Thurston county, one of them by John Doe Company against Smith & Company. The second is the State of Washington against the John Doe Company. In the first complaint, the plaintiff alleges that, between the first day of June, 1943, and the 10th day of August, 1944, plaintiff sold and delivered to the defendant goods, wares and merchandise of the agreed value of $1,000, which defendant refused to pay, though demand has been [fol. 94] made therefor; that the plaintiff is a foreign corporation, has not filed its articles of incorporation with the secretary of state of the state of Washington, nor has it paid its annual license fee to the state of Washington; that its business within this state is interstate business conducted in the following manner: Plaintiff is an Illinois corporation having its business in the city of Chicago, where it manufactures washing machines and sells the same in various states of the Union, including the state of Washington. In the state of Washington its merchandise is sold through several selling divisions or branches in Spokane, Seattle and Olympia. It maintains no general agent in the state of Washington and makes no contracts of sale in the state. It does not maintain a stock of merchandise in this state and makes no delivery of merchandise herein. That the manner in which the business is conducted in the state of Washington is generally as follows: Salesmen are employed from the Chicago office and work under the direct supervision and control of the sales managers in Chicago and are required as part of their duties to spend a certain portion of their time in Chicago for the purpose of receiving direct personal instructions as to their duties relative to the line of machines sold to the trade and the method of selling; further to receive information with reference to construction and new types and kinds of washing machines which are to be offered. The employees or salesmen are given a sample machine, but no sales are made of such samples, they being used for purposes of display to prospective purchasers. Some of the salesmen rent sample rooms in business buildings and expenses of the rental and maintenance are paid by them and they are then reim-

bursed on expense account by plaintiff. Some salesmen [fol. 95] maintain no permanent sample rooms, but rent rooms in hotels or business buildings in the cities through which they travel. Each salesman is given a designated territory in which to solicit orders. The authority of each salesman is limited to exhibiting samples of the machines for which they solicit orders for the merchandise. Salesmen endeavor to procure orders on prices and terms fixed by plaintiffs. If orders are obtained, they are transmitted to the office of plaintiff in Chicago, Illinois, for acceptance or rejection, and if orders are accepted by the plaintiff, the merchandise is shipped f. o. b. from shipping points in the state of Washington. The merchandise which is shipped into Washington is invoiced at the point of shipment and the invoices are payable at point of shipment, from which point collections are made. The salesmen have no power or authority to bind plaintiff to any contract or to finally conclude any transaction in its behalf, their duties and authority being limited strictly to the solicitation of orders. It is further alleged that the salesmen are under the direct control and direction of plaintiff and are not permitted to engage in any independently established trade, occupation, profession or business of the same nature involved in their employment by plaintiff.

The second complaint was filed by the state of Washington, seeking to collect taxes for unemployment compensation insurance from plaintiff. John Doe Company's salesman in Seattle or Olympia is served with complaint and summons and the company then moves to quash the service on the ground that it is not doing business in this state, and bases its motion upon the allegations of the complaint which are identical with the allegations contained in plaintiff's complaint against Smith & Company except as to [fol. 96] designation of individuals. Counsel, with the consent of the trial court, agree to argue the cases at the same time.

The trial court is faced with the answer to one question: What amounts to doing business in this state? The trial court then, in rendering its decision upon identical facts, must hold in the first case that plaintiff is not doing business in this state and in the second case that the same individual is doing business in the state.

There are hundreds of cases written on the subject we

have before us. However, it would serve no useful purpose to cite them in this opinion.

I shall content myself by calling attention to the cases cited by the majority. In so doing, I will pay particular attention to the factual situations as compared with those in this case. I shall do this for the reason that each case must necessarily depend on its own facts. St. Louis Southwestern Ry. Co. of Texas v. Alexander, 227 U. S. 218, 57 L. Ed. 486.

In Green v. Chicago, Burlington & Quincy Ry. Co. (1907), 205 U. S. 530, 51 L. Ed. 916, plaintiff brought an action for personal injuries in the Federal court for the eastern district of Pennsylvania. The action was against the Chicago, Burlington & Quincy Railway Company, incorporated in Iowa. The sole question presented in that case was the sufficiency of process for jurisdiction in the Federal court. The following facts were present:

The eastern point of the railroad was at Chicago, from which place its tracks extended westward. The business for which it was incorporated was the carriage of freight and passengers and the construction, maintenance and operation of the railroad for that purpose. According to the business [fol. 97] methods generally pursued, freight and passenger traffic was solicited in other parts of the country than those through which the defendant's tracks ran. For the purpose of conducting this business, defendant employed one Heller, supplied an office for him in Philadelphia, designated him as "district freight and passenger agent," and in many ways advertised these facts to the public. The business of the agent consisted of soliciting and procuring passengers and freight to be transported over the defendant's line. In conducting this business, the company employed several clerks and various traveling passenger and freight agents, who reported to and acted under the direction of the agent. The agent could not sell tickets or receive payment for transportation of freight. When a prospective passenger desired a ticket, he applied to the agent, who took the applicant's name and procured a ticket from one of the railroads running west from Philadelphia. The ticket was on a prepaid order, and the applicant, upon arriving in Chicago, had a right to receive from the defendant company a ticket over that road. At various times, the agent sold tickets to railroad employees who had tickets over intermediate lines. In some cases, to suit the convenience of shippers who had

received bills of lading from an initial line for goods routed over the defendant's lines, the agent gave in exchange therefor bills of lading over defendant's line. The bills of lading recited that they should not be in force until the freight had been actually received by defendant.

Touching the validity of the service upon the agent, the court said it depended upon

[fol. 98] "* * * whether the corporation was doing business in that district in such a manner and to such an extent as to warrant the inference that through its agents it was present there."

The court further said:

"The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'doing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it."

This case has never been overruled, though in some cases it has been distinguished because of a different factual situation existing in the other cases. The rule announced in the above case has been followed by the United States Supreme Court eight times, by the Federal courts 112 times, and by the state courts 86 times. This court has adhered to the ruling in Arrow Lumber & Shingle Co. v. Union Pac. R. Co., supra.

Among the many cases upholding the rule just announced are: St. Louis Southwestern Ry. Co. of Texas v. Alexander (1913), 227 U. S. 218, 57 L. Ed. 486; International Harvester Co. v. Kentucky (1914), 234 U. S. 579, 58 L. Ed. 1479; Tyler Co. v. Ludlow-Sayre Wire Co. (1915), 236 U. S. 723, 59 L. Ed. 808; People's Tobacco Co. v. American Tobacco Co. (1918), 246 U. S. 79, 62 L. Ed. 587; Minnesota Commercial Men's Association v. Benn (1923), 261 U. S. 140, 67 L. Ed. 573; and Davis v. Farmers Co-operative Co. (1923), 262 U. S. 312, 67 L. Ed. 996.

In the Harvester Co. case, referred to by the majority as the leading case upon the subject, the facts were stated as follows:

"The Company's transactions hereafter with the people of Kentucky must be on a strictly interstate commerce basis.

Travelers negotiating sales must not hereafter have any headquarters or place of business in that State, but may reside there.

[fol. 99] "'Their authority must be limited to taking orders, and all orders must be taken subject to the approval of the general agent outside of the State, and all goods must be shipped from outside of the State after the orders have been approved. *Travelers do not have authority to make a contract of any kind in the State of Kentucky. They merely take orders to be submitted to the general agent. If any one in Kentucky owes the Company a debt, they may receive the money, or a check, or a draft for the same but they do not have any authority to make any allowance or compromise any disputed claims.* When a matter cannot be settled by payment of the amount due, the matter must be submitted to the general or collection agent, as the case may be, for adjustment, and he can give the order as to what allowance or what compromise may be accepted. All contracts of sale must be made f. o. b. from some point outside of Kentucky and the goods become the property of the purchaser when they are delivered to the carrier outside of the State. Notes for the purchase price may be taken and they may be made payable at any bank in Kentucky. All contracts of any and every kind made with the people of Kentucky must be made outside of that State, and they will be contracts governed by the laws of the various States in which we have general agencies handling interstate business with the people of Kentucky. For example, contracts made by the general agent at Parkersburg, W. Va., will be West Virginia contracts. * * *'" (Italics mine.)

It will be noticed that I have italicized more of the facts than the majority. I have done this because I contend that the court took notice of all of the facts in the case, including "If any one in Kentucky owes the Company a debt, they [travelers] may receive the money, or a check, or a draft for the same * * *"

On page 587 of the opinion, the court re-emphasized the facts by stating:

"*In the case now under consideration there was something more than mere solicitation. In response to the orders received, there was a continuous course of shipment of machines into Kentucky. There was authority to receive*

payment in money, check or draft, and to take notes payable at banks in Kentucky. (Italics mine.).

The court upheld the Green case, but was of the opinion that it did not apply because the factual situation was entirely different.

[fol. 100] The holding in the Harvester Co. case could not have been based entirely upon the continuous course or flow of business, because there was a continuous course of business conducted by the companies in both cases.

I call attention to the fact that the facts in the case at bar are like those in the Green case and entirely dissimilar to those present in the Harvester Co. case. The Green case is in point, and the latter case is not in point.

At this time, I desire to emphasize the point that this court has repudiated the continuous flow of business theory in Brandtjen & Kluge, Inc. v. Nanson, supra. In passing upon the question of the effect that the number of transactions had upon the question of doing business in this state, we stated:

"The appellant seeks to distinguish the case of *Smith & Co. v. Dickinson* by saying that, in that case, there was only proof of 'isolated transactions' in this state. However, the opinion in that case shows on its face that the transactions of the plaintiff were no more isolated than were the transactions in this case. *Whether a foreign corporation is doing business in this state does not depend upon the number of transactions that it has, but upon the nature and character of the transactions.*" (Italics mine.)

The majority stress the holding in Tauza v. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915, in which it was held that a continuous flow of interstate business constituted doing business by a corporation in a state foreign to its place of organization. The writer of the opinion based his holding upon the Harvester Co. case, but failed to note the factual situation present in that case, which was that, in addition to soliciting business, the Harvester Co. employees made collections for their company.

The Supreme Court of the United States, in the People's Tobacco Co. case, adhered to this idea by saying:

[fol. 101] "The plaintiff in error relies upon *International Harvester Co. v. Kentucky*, 234 U. S. 579, but in that case

the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the State, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Harvester Company amenable to the process of the courts of that State."

The Federal courts in the following cases recognized that the holding in the International Harvester Co. case was grounded upon the fact that agents were doing business by making collections: Hilton v. Northwestern Expanded Metal Co., 16 F. (2d) 821; Cone v. New Britain Mach. Co., 20 F. (2d) 593; Buffalo Batt & Felt Corporation v. Royal Mfg. Co., 27 F. (2d) 460; Davega, Inc. v. Lincoln Furniture Mfg. Co., 29 F. (2d) 164. The facts and holding in the last case are so persuasive that I quote from them at length:

"(1) The defendant secured orders in New York through Shlivek for about $200,000 of furniture per year;

"(2) The defendant sold in New York through Shlivek about $1,000 of furniture per year, which had been shipped there for samples; Shlivek collected some overdue accounts.

"(3) The president and sales manager have come here 10 or 11 times a year, and while here have discussed business matters with Shlivek, and have also at times adjusted accounts with customers.

"(4) The sales manager, C. C. Lincoln, Jr., while in New York, arranged the contract for radio cabinets on which this action is brought, and has also solicited here other orders in radio cabinets.

"This is a very close case. The Supreme Court has said that the test of whether a foreign corporation is amenable to process depends upon whether 'it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there.' Philadelphia & Reading Ry. Co. v. McKibbin, 243 U. S. at page 265, 37 S. Ct. 280, 61 L. Ed. 710; People's Tobacco Co. v. American Tobacco Co., 246 U. S. at page 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918C, 537; Rosenberg Co. v. Curtis Brown Co., 260 U. S. at page 517, 43 S. Ct. 171, 67 L. Ed. 372. This is a

mere reiteration of the earlier statement by the same court that it 'has decided each case of this character upon the facts [fol. 102] brought before it and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction.' St. Louis Southwestern Ry. Co. v. Alexander, 227 U. S. at page 227, 33 S. Ct. 248, 57 L. Ed. 486.

"We are, in short, aided only by comparing those decisions in which the facts have been held to show the presence of corporations in foreign states, for the purpose of subjection to the jurisdiction, and the contrary. It has been definitely determined that the mere renting of an office and solicitation of business in the foreign state is insufficient to subject the corporation to service of process. W. S. Tyler Co. v. Ludlow-Saylor Wire Co., 236 U. S. 723, 35 S. Ct. 458, 59 L. Ed. 808; People's Tobacco Co. v. American Tobacco Co., 246 U. S. 79, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918C, 537. Nor is the fact (if it be the fact, as is disputed) that the cause of action asserted here arose in New York material, unless the corporation was doing business in the sense that is required to subject it to jurisdiction. Rosenberg Co. v. Curtis Brown Co., 260 U. S. at page 51, 43 S. Ct. 170, 67 L. Ed. 372.

"The plaintiff says that much more was done here than the solicitation of orders, and especially relies on International Harvester v. Kentucky, 234 U. S. 579, 34 S. Ct. 944, 58 L. Ed. 1479. In that case the travelling salesmen of the harvester company did far more than to take orders to be accepted outside of the state. While it was generally provided, as in the present case, that 'all contracts of sale must be made f. o. b. from some point outside of Kentucky, and the goods become the property of the purchaser when they are delivered to the carrier outside of the state,' the agents were authorized to receive money, checks, or drafts from any one within the state who might owe the company and take notes of customers payable therein.

"Here Shlivek [the agent] was paid nothing for collecting accounts. He received no salary, but was only paid a commission based on the contracts which originated through him, and not on the amount realized. He did not receive payment for the furniture shipped from Virginia, or even have a record of the accounts. He occasionally adjusted disputes, subject to the approval of the home office and

procured payment of *overdue* indebtedness. The president and vice president of the corporation came into New York a few times a year, and made, or sought to make, adjustments; but, if occasional adjustments of accounts within the state are to be regarded as sufficient to subject a corporation to the jurisdiction, no foreign corporation can solicit business in any volume without become liable to service of process. Such a result seems a sufficient answer to the suggestion that the adjustment of disputes with customers strengthens the plaintiff's case. The situation is different from that in the Harvester Case, where the course of business involved not collection of *overdue* accounts, but regular payment in the foreign state."

[fol. 103] I can have no quarrel with the following cases cited by the majority, because in each of them the foreign corporation employed collectors in the state where they were working: Lamont v. Moss Cigar Co., 218 Ill. App. 435; George A. Hormel & Co. v. Ackman, 117 Fla. 419, 158 So. 171; Wheeler v. Boyer Fire Apparatus Co., 63 N. D. 403, 248 N. W. 521; International Shoe Co. v. Lovejoy, 219 Iowa 204, 257 N. W. 576; Dobson v. Maytag Sales Corporation, 292 Mich. 107, 290 N. W. 346.

In fact, the Wheeler case was based upon the entire holding in the Harvester Co. case, from which we have quoted at length.

The case of American Asphalt Roof Corporation v. Shankland, 205 Iowa 862, 219 N. W. 28, was based upon the Harvester Co. and Tauza cases, and the writer of the opinion was guilty of the same sin of omission as the writer of the Tauza case in that he did not give full credit to all of the facts in the Harvester Co. case.

In all of the other cases mentioned by the majority are to be found facts similar to those in the Harvester Co. case in that the foreign corporation allows its agents to make collections or to do some other item of local business.

This is especially true of West Pub. Co. v. Superior Court, 20 Cal. (2d) 720, 128 P. (2d) 777, in which it appears that the salesman accepted an initial payment upon books sold and helped collect delinquent accounts.

An exception is Dahl v. Collette, 202 Minn. 544, 279 N. W. 561, the writer of which case committed the same error charged in the Tauza case.

The case of Harbich v. Hamilton-Brown Shoe Co., 1 F. Supp. 63, was decided upon the factual situation shown by [fol. 104] affidavit. One of the affidavits indicated the following facts:

"After selecting the line of shoes that I desire for my trade, the sales agent then quotes me prices on these shoes and, if the prices are such that I conclude that I can use the shoes profitably, I accept his offer as quoted and direct him to ship me the shoes agreed upon, telling him the sizes that I desire for my trade and he transmits this order to the Hamilton-Brown Shoe Company and it delivers me the shoes in accordance with the trade I have made with its drummer or salesman."

Frene v. Louisville Cement Co., 134 F. (2d) 511, is not in point because the facts are entirely unlike those in the instant case. To show their difference, I quote as follows:

"However, it is admitted that he [Lovewell, the agent] frequently visits jobs in course of construction where the defendant's products are being used. On these occasions he 'would note the manner in which the products were being installed or used and if any difficulties were being experienced, he would make suggestions as to how to overcome them; he would also go over any complaints with regard to the materials' and report them to the home office. He had no authority finally to make adjustments or compromises. Lovewell called at the plaintiffs' house three or four times during the course of construction and 'half a dozen times' at another job then being done in the District for the Government. In connection with the latter, he took specimens of the work to government agents 'for testing purposes * * * to have approval by the Government.' During these visits he inspected the work as it progressed, saw that the Brixment was properly mixed, was being properly spread, was being used as the defendant intended, and pointed out the values of different brick textures and bondings when used with Brixment. According to the plaintiff Leo Frene, Lovewell carefully looked over the plans and specifications for his house, 'visited the work regularly while in course of construction, and pointed out minor and major details to the brick-masons.' Frene also stated he knew 'of many other jobs where said Lovewell has not alone sold the Brixment, but has participated in and

exhibited his engineering ability and fitness in order to promote and advance the general scheme of the work.'

"Lovewell testified that his employer 'told me to go on the job and see how they are progressing, how they like the material, how they are satisfied with it, and so forth' and 'the idea is to use my best judgment in promoting satisfactory use of this material.' The record further shows that Lovewell regularly secured information for his employer from various governmental agencies and departments, including the Bureau of Standards, the Procurement Division of the Treasury Department and the Government Printing Office. He admitted this work called upon 'his engineering ability and not his sales ability,' that it related [fol. 105] in part to specific matters affecting his employer's work, such as failure of its materials to pass government specification with resulting throwback by the contractor, and that the defendant would write instructing him to check up on the matter. He was useful also in securing more general information."

The above opinion contains a lengthy dissertation on the question of doing business. However, the essay has nothing to do with the factual situation present in the case nor with the applicable law. It is only an argument in favor of the so-called "modern trend."

A careful reading of the cases cited by the majority as upholding its contentions reveals that in only two of them, the Tauza and Dahl cases, do the facts coincide with those with which we are dealing.

It seems to me that the judgment should be reversed for two reasons: (1) that this court has at various times, upon facts alike to those present here, laid down a definite rule as to what constitutes doing business in this state, which rule is contrary to the one adopted by the majority; and (2) the cases from other jurisdictions have in fact announced rules contrary to those upon which the majority bases its holding.

Simpson, C. J.

I concur in dissent of Simpson, C. J. Millard, J.

[fol. 106] [File endorsement omitted.]

[fol. 106-1] IN THE SUPREME COURT OF WASHINGTON

[Title omitted]

PETITION FOR REHEARING—Filed January 26, 1945

Comes now the International Shoe Company, a corporation, appellant herein, and respectfully moves this Court for a rehearing of this cause.

[fol. 106-2] It is with a distinct feeling of "*mea culpa*" that the writer of this petition does so. We permitted the intense certainty of the soundness of our contention regarding the special appearance and objection to jurisdiction to overcome our thoughts regarding the *actual merits* of the cause and, in turn, led the Court into what we now consider an error.

It is stated in the majority opinion (page 5 of the typewritten opinion):

> "The principal question with which we are concerned is whether or not appellant was doing business in the State of Washington, *so as to make it amenable to process of the Courts of this State.*" (Emphasis ours)

Indeed, it was to this question that a large portion of all briefs and of the oral argument was devoted; but, actually, it is secondary.

The conclusion of the Court on this question is one with which we cannot agree, but on the other hand, the able opin-

[fol. 106-3] ion of the majority so carefully considers all of the arguments and the authorities that were presented on this, the "principal question," that we feel it hopeless to write a petition to review it on that ground. So with the conclusion of the majority on this question we quarrel but accept as final in this Court.

This petition is based on assignment of error number three, as found in appellant's opening brief which is as follows:

> "The Court erred in finding that the unemployment commission had jurisdiction to levy an assessment against appellant for contribution to the unemployment compensation fund." (Page 11, appellant's opening brief)

Argument on that assignment commences on page 26 of this brief. The argument raises the constitutional question

based upon three separate parts of the Constitution of the United States.

Article I, Sec. 8:

> "The Congress shall have power * * * to regu-
> [fol. 106-4] late Commerce * * * among the several states:"

Fifth Amendment:

> "No person shall * * * be deprived of * * * property without due process of law."

Fourteenth Amendment:

> "No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law."

This Court duly considered the argument advanced by the first of these Constitutional objections and held that the tax was not a burden on interstate commerce. With this conclusion, we likewise disagree, but accept as final in this Court.

There remains, however, the Fifth and Fourteenth Amendments and to this important question *not one single word is written in either the majority or minority opinions of this Court.*

[fol. 106-5] As we stated earlier in this petition we feel entirely at fault for permitting our enthusiasm on the objection to jurisdiction to cause us to neglect what is obviously the *more important question*, namely: the *right of the State to levy the tax.*

This question does not concern interstate commerce or burden upon it. It is simply a matter of the right of this State to tax a *non-resident, a person who isn't here.*

In the majority opinion in this case the Court has gone to great pains to point out that the test of presence within the State so as to subject a foreign corporation to service of process is vastly different from the test to be applied for determination of presence within the State for other purposes.

With this distinction we do not quarrel; in fact, we agree, and while we maintain that the International Shoe Com-
[fol. 106-6] pany is not within the State so as to subject it

to the processes of the Court, we will concede for the purpose of this petition that it is so.

From this conclusion this Court simply assumes that, being here so as to be subject to process, the corporation is here so as to be subject to tax; *with this we take sharp issue.*

The assumption is in reverse logically. It holds that since the corporation is subject to process to collect the tax it is subject to the taxing powers of the State. The correct and logical approach would be to determine first whether or not the corporation was subject to the tax and, second, whether or not it is subject to the processes of the States to collect the tax.

There are, we conceive, two categories into which all taxes can be divided:

1—*In personam.*

2—*In rem.*

[fol. 106-7]—The tax here in question is not against property; therefore, not "in rem" but is against the *privilege* of employment. *Bates v. McLeod*, 11 (Wn. (2d) 648, 120 P. (2d) 472, and, therefore, must be "in personam."

A cause adjudicated by the Supreme Court of the United States considers the right of a State to subject tangible personal property located in another State to Inheritance Tax. We quote from that decision:

> "This precise question has not been presented to this Court before, but there are many decisions dealing with cognate questions which point the way to its solution. These decisions show, first, that the exaction by a state of a tax which if is without power to impose is a taking of property without due process of law in violation of the Fourteenth Amendment; secondly, that while a state may so shape its tax laws as to reach every object which is under its jurisdiction *it cannot give them any extra-territorial operation.* * * *
>
> "* * * The Pennsylvania statute is a tax law, not [fol. 106-8] an escheat law. This is made plain by its terms and by the opinion of the state court. The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the state. *But to impose either tax the state must have jurisdiction over the thing that is taxed, and to impose either with-*

out such jurisdiction is mere extortion and in contravention of due process of law." (Emphasis ours)

Frick v. Commonwealth of Penn., 45 S. C. 603, 268 U. S. 473, 66 L. ed. 1058.

"The power of taxation, however, vast in its extent, is necessarily limited to subjects, *within the jurisdiction of the state*. These subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects." (Emphasis ours)

Cleveland P. & A. R. R. Co. v. Commonwealth of Penn., 15 Wall. 300, 21 L. ed. 179.

These cases are cited for the purpose of showing the [fol. 106-9] Court that the abuse of taxing powers is a contravention of the Fourteenth Amendment to the Federal Constitution.

The decision in this cause has, we believe, gone as far as any Court in the nation, state or federal, in holding that the appellant is subject to process of the courts, but as the majority opinion points out, this is a far cry from holding the corporation to be a resident of the State for *other purposes*. Certainly, the imposition of a tax is *another purpose*.

To enable us to more fully present to the Court argument on this one point, we earnestly petition for a rehearing of this cause.

Respectfully submitted, Stern & Stern and Allen Orton and T. M. Royce, Attorneys for Appellant-Petitioner.

1912 Smith Tower, Seattle 4, Washington.

[fol. 107] IN THE SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed February 6, 1945

The court having considered the appellant's petition for a rehearing herein,

It Is Ordered that the petition for rehearing be and it is hereby denied.

Dated this 6th day of February, 1945.

By the Court, Walter B. Beals, Chief Justice.

[File endorsement omitted.]

[fol. 108] IN THE SUPREME COURT OF WASHINGTON

INTERNATIONAL SHOE COMPANY, a Corporation, Appellant,

vs.

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT and E. B. Riley, Commissioner, Respondents

JUDGMENT—February 6, 1945

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 6th day of February, A. D. 1945, on motion of Smith Troy, and George W. Wilkins, of counsel for respondents, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said State of Washington, Office of Unemployment Compensation and Placement, and E. B. Riley, Commissioner, have and recover of and from the said International Shoe Company, a corporation, and from United States Fidelity and Guaranty Company, surety, the costs of this action

taxed and allowed at One hundred thirty-seven and 41/100 ($137.41) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 109] IN THE SUPREME COURT OF WASHINGTON

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL AND PRAYER FOR REVERSAL—Filed May 3, 1945

To the Hon. Walter B. Beals, Chief Justice of the Supreme Court of the State of Washington:

Comes Now the International Shoe Company, a corporation, the above named appellant, by its attorneys, Leopold M. Stern and T. M. Royce, and respectfully shows that it is a citizen of the United States of America, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware; that in the above entitled cause, on the 6th day of February 1945, the Supreme Court of the State of Washington, sitting en banc, the highest court of said State in which a decision in said cause could be heard, rendered a certain en banc final decision and judgment against said appellant, and in favor of the respondents in said Court, namely, the State of Washington, Office of Unemployment Compensation and Placement, and E. B. Reilly, Commissioner, affirming a certain judgment for the sum of $3159.24 against appellant and in favor of said respondents rendered by the Superior Court of the State of Washington for King County on the 10th day of November 1943, which [fol. 110] in turn affirmed the levy of an assessment made by said respondents against said appellant on the 11th day of February 1943 for the sum of $3159.24 for contributions to the Unemployment Compensation Fund of respondents, found to be due from appellant to respondents for the period of January 1, 1937 through December 31, 1941.

In its said final en banc decision and judgment it was adjudged by the Supreme Court of Washington that the provisions of Chapter 253 of the Session Laws of 1941 of Washington, page 870 et seq. and of Chapter 214 of the Session Laws of 1939 of Washington, page 818 et seq.,

which require employers engaged in interstate commerce to make contributions to the Unemployment Fund of the Department of Unemployment Compensation and Placement of the State of Washington, are not in conflict with the provisions of Section 8 of Article I of the Constitution of the United States which provide that no state shall enact any law regulating interstate commerce; and are not in conflict with the provisions of Sec. 1 of Article 14 of the Amendments to the Constitution of the United States, which provide that no citizen shall be deprived of property without due process of law.

In its said final en banc decision and judgment in the above entitled cause it was also adjudged by said Supreme Court that the provisions of said Chapter 253 of the Laws of 1941 and of Chapter 127 of the Session Laws of Washington of 1893, page 407 et seq., and of Chapter 86 of the Session Laws of Washington of 1895, page 407 et seq., which provide that notice of assessment for contributions claimed due the unemployment fund may be served upon a corporation foreign to the State of Washington, and which does no intrastate business in the State of Washington, by the delivery of a copy of such notice of assessment to any agent of such foreign corporation, and which provide that if the amount so assessed is not paid within ten days after service of such notice the amount stated shall be collected by the Commissioner of said Department by the distraint, seizure and sale of the property of such employer, are not in conflict [fol. 111] with the provisions of Section 1 of Article 14 of the Amendments to the Constitution of the United States which provide that no citizen shall be deprived of property without due process of law.

All of the said rulings of the Supreme Court of the State of Washington in its said en banc decision and judgment appear in the record opinion, decision and final judgment of said Supreme Court rendering judgment against petitioner.

Petitioner and appellant has filed with this petition, with the Clerk of said Supreme Court of the State of Washington, an assignment of errors, setting out separately and particularly each error asserted by it, and also presents herewith a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Wherefore your petitioner prays the allowance of an appeal from said judgment of the Supreme Court of the State of Washington to the Supreme Court of the United States, to the end that the record in said matter may be removed into the said Supreme Court of the United States and the errors complained of by petitioner be examined and corrected and said judgment reversed.

International Shoe Company, Petitioner, by Leopold M. Stern, T. M. Royce, Attorneys for Petitioner.

Smith Tower, Seattle.

[File endorsement omitted.]

[fol. 112] IN THE SUPREME COURT OF WASHINGTON

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 3, 1945

Comes Now the appellant International Shoe Company and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Washington, in the above entitled matter, there is manifest error in this, to-wit:

I

The Court erred in holding that the provisions of Chapter 253 of the Laws of 1941 of Washington, page 870 et seq., and particularly Sec. 14 of Chapter 253 of the Session Laws of Washington of 1941, page 904 et seq.; (Rem. Rev. St. 1941 Suppl. page 521-522, Sec's. 9998-e-e), and of Chapter 127 of the Session Laws of Washington, and particularly Paragraph 9 of Sec. 7 of Chapter 127 of the Session Laws of Washington of 1893, page 407 et seq. (2 Rem. Rev. St. Sec. 226), and of Chapter 86 of the Session Laws of Washington of 1895, page 170 (2 Rem. Rev. St. Sec. 220), are not in conflict with and in violation of the provisions of Section 1 of Article 14 of the Amendments to the Constitution of the United States, because the State of Washington by and through the provisions of said chapter assumes and seeks to deprive the appellant and other citizens of the United States of property without due process of law.

II

The Court erred in holding that by the provisions of said Acts the appellant is not deprived of property without due process of law.

[fol. 113]

III

The Court erred in holding that the provisions of Chapter 214 of the Session Laws of Washington of 1939 and particularly Paragraph g(1) of Section 16 of Chapter 214 of the Session Laws of 1939 of Washington, page 856 (10 Rem. Rev. St. pocket part sec. 9998-119(g)(1), page 326), and of Chapter 253 of the Laws of Washington of 1941, and particularly Sections 4, 5, 11 and 14 of Chapter 253 of the Session Laws of Washington of 1941, page 870 et seq. (Rem. Rev. St. 1941 Suppl. sec. 9998-106-107-114-119, page 499 et seq.) are not in violation of Section 8 of Article I of the Constitution of the United States which confers upon Congress the exclusive power to regulate commerce among the several states.

IV

The Court erred in holding that the said state statutes do not place burdens upon interstate commerce.

V

The Court erred in holding that the provisions of said Chapter 214 of the Session Laws of Washington of 1939 and particularly of paragraph (g) (1) of Section 16 of Chapter 214 of the Session Laws of Washington of 1939, page 856, and the provisions of said Chapter 253 of the Session Laws of Washington of 1941, and particularly of Sections 4, 5, 11 and 14 of Chapter 253 of the Session Laws of Washington of 1941, page 870 et seq. are not in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States, which provides that no citizen shall be deprived of property without due process of law.

VI

The Court erred in holding that said state statutes do not place burdens upon interstate commerce.

[fol. 114] VII

The Court erred in ordering judgment to be entered against the appellant.

VIII

The Court erred in declaring and decreeing that said Chapter 214 of the Session Laws of Washington of 1939, and particularly of Paragraph g(1) of Section 16 of Chapter 214 of the Session Laws of 1939 of Washington, page 856, and said Chapter 253 of the Session Laws of Washington of 1941 and particularly Sections 4, 5, 11 and 14 of Chapter 253 of the Session Laws of Washington of 1941, page 870 et seq., were constitutional and valid and did not violate Section 8, Article 1 of the Constitution of the United States, and did not violate Section 1 of Article 14 of the Amendments to the Constitution of the United States.

IX

The Court erred in declaring and adjudging that said Chapter 253 of the Session Laws of Washington of 1941, and particularly Section 14 of Chapter 253 of the Session Laws of Washington of 1941, page 904, and said Chapter 127 of the Session Laws of Washington of 1893, and particularly Paragraph 9 of Section 7 of Chapter 127 of the Session Laws of Washington of 1893, page 407, and said Chapter 86 of the Session Laws of Washington of 1895, page 170, are constitutional and valid and do not violate Section 1 of Article 14 of the Amendments to the Constitution of the United States.

Leopold M. Stern, T. M. Royce, Attorneys for Appellant, International Shoe Company.

[File endorsement omitted.]

[fol. 115] In the Supreme Court of Washington

[Title omitted]

Order Allowing Appeal—Filed May 3, 1945

The appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and

entered in the above entitled suit, by the Supreme Court of the State of Washington, on the 6th day of February 1945, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided; it is now here

Ordered that an appeal be and the same hereby is allowed to the Supreme Court of the United States from the Supreme Court of the State of Washington, in the above entitled cause, as provided by law; and it is further

Ordered that the Clerk of the Supreme Court of the State of Washington shall prepare and certify a transcript of the record, proceedings and judgment in this cause, and transmit the same to the Clerk of the Supreme Court of the United States, so that he shall have the same in said Court within sixty (60) days of this date; and it is further

[fol. 116] Ordered that the suspending bonds now on file with the Supreme Court of the State of Washington in the above entitled suit remain in full force and effect throughout the pendency of said appeal proceedings; that security for costs on appeal be fixed in the sum of Six Thousand Dollars ($6,000.00) and that upon approval of bond in said amount, this order shall operate as a supersedeas.

Dated at Olympia, Washington, this 3rd day of May, 1945.

Walter B. Beals, Chief Justice of the Supreme Court of the State of Washington.

[File endorsement omitted.]

[fol. 117] Citation in usual form showing service on Smith Troy, et al., filed May 3, 1945, omitted in printing.

[fols. 118-221] Bond on appeal for $6,000.00 approved and filed May 3, 1945, omitted in printing.

[fol. 222] IN THE SUPREME COURT OF WASHINGTON

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed May 4, 1945

To the Clerk of said Court:

You Are Hereby Requested to make a transcript of the record to be filed with the Supreme Court of the United States pursuant to an appeal in the above styled cause, and to include in said transcript of record the following papers and exhibits, to-wit: The following papers from the transcript on appeal from the Superior Court.

1. Commissioners Record,

2. Notice of Appeal to the Superior Court for King County,

3. Judgment of the Superior Court for King County;

4. All documents and papers filed on behalf of International Shoe Company, appellant, to perfect appeal to the Supreme Court of the State of Washington, including specifically:

a. Notice of appeal and appeal bond,
b. Appellant's opening Brief,
c. Opinion of the Supreme Court of the State of Washington filed January 4, 1945,
c-a. Petition for Rehearing,
d. Order Denying Petition for Rehearing filed February 6, 1945
e. Judgment of the Supreme Court of February 6, 1945,

5. The Petition for Appeal to the Supreme Court of the United States and proof of service

6. The Assignment of errors by parties representing the International Shoe company, and proof of service,

[fol. 223] 7. The Order allowing Appeal and fixing amount of bond,

8. The citation of appeal to State of Washington, Office of Unemployment Compensation and Placement, and E. B. Reilly, Commissioner, respondents, signed by the Chief Justice of the Supreme Court of the State of Washington, and proof of service,

9. The bond for costs and supersedeas on appeal, and approval thereof,

10. Notice to respondent of petition for and allowing appeal and other papers with notice to Supreme Court Rule 12, Paragraph 3, and proof of service.

11. Statement as to Jurisdiction.

12. This praecipe and acknowledgment, and proof of service, said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States on or before the 1st day of July, 1945.

Leopold M. Stern, T. M. Royce, Attorneys for Appellant International Shoe Company.

Copy of the Within Praecipe received and service thereof acknowledged this 3d day of May, 1945.

Smith Troy, Attorney General of the State of Washington; Gerald B. Hile, Acting Attorney General of the State of Washington; George W. Wilkins, Assistant Attorney General of the State of Washington.

[File endorsement omitted.]

[fol. 224] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

AFFIDAVIT OF SERVICE—Filed May 15, 1945

STATE OF WASHINGTON,
County of King, ss:

T. M. Royce, being first duly sworn, on oath deposes and says: That he is the attorney for the appellant in the above entitled action; that on the 3rd day of May 1945 affiant served upon the respondents in the above entitled action full true and correct copies of the following papers in said action: The Petition for Appeal to the Supreme Court of the United States; The Assignment of Errors by parties representing the International Shoe Company; The Order allowing Appeal and fixing amount of bond; The citation of appeal to State of Washington, Office of Unemployment Compensation and Placement, and E. B. Reilly, Com-

missioner, respondents, signed by the Chief Justice of the Supreme Court of the State of Washington; The bond for costs and supersedeas on appeal, and approval thereof; Notice to respondent of petition for and allowing appeal and other papers with notice to Supreme Court Rule 12, Paragraph 3; Statement as to Jurisdiction, and Praecipe for Transcript of Record,—the originals of which are on file with the Clerk of the above entitled Court, by delivering to and leaving the same with George V. Wilkins, Assistant Attorney General for the State of Washington, in Olympia, Thurston County, Washington.

T. M. Royce.

Subscribed and sworn to before me this 15th day of May, 1945. Craig Travis, Notary Public in and for the State of Washington, residing at Seattle. (Seal.)

[fol. 225] Clerk's Certificate to foregoing transcript omitted in printing.

[fols.226-227] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD—
Filed June 6, 1945

Comes Now the appellant, International Shoe Company, in the above entitled cause, and adopts its respective assignments of error as its statement of points to be relied upon, and states that the whole of the record as filed is necessary for a consideration of the case.

John L. Sullivan, Lawrence J. Bernard, Counsel for Appellant, Stoneleigh Court, 1025 Connecticut Ave., Washington, D. C.; Leopold M. Stern, T. M. Royce, Of Counsel for Appellant, Seattle, Washington.

Copy of above and foregoing statement received and due service thereof acknowledged this 24 day of May, 1945.

Smith Troy, Attorney General of the State of Washington; Gerald D. Hile, Acting Attorney General of the State of Washington; George W. Wilkins, Assistant Attorney General of the State of Washington, Attorneys for Appellees.

[fol. 228] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—June 18, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket. The Court does not care to hear argument on the question whether the statutes attacked place an undue burden on interstate commerce.

Mr. Justice Roberts took no part in the consideration of this question.

Endorsed on Cover: File No. 49,798. Washington, Supreme Court, Term No. 107. International Shoe Company, Appellant, vs. State of Washington, Office of Unemployment Compensation and Placement and E. B. Riley, Commissioner. Filed June 4, 1945. Term No. 107 O. T. 1945.